Supreme Court, U.S.
FILED

961124 NOV 12 1996

OFFICE OF THE CLERK

No. _____

In The

# Supreme Court of the United States

October Term, 1996

CHESTER LEO SMITH AND
ANN LONERGAN SMITH,

*Petitioners,*

v.

TIMOTHY SCOTT ROMAN,
ESTATE HARRIET SHAPIRO,

*Respondents.*

**On Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of California**

## PETITION FOR WRIT OF CERTIORARI

CHESTER LEO SMITH
*Counsel of Record*
SMITH & SMITH
636 East Walnut Street
Pasadena, California 91101
1 818 432 1673

159 pp

## QUESTIONS PRESENTED

(1) Does not the Royal Courts of Justice 19 July, 1996, 80 page Tentative Judgment of The Hon. Mr. Justice Morland in . . . **"The Creutzfeldt-Jacob Disease [CJD] Litigation"** (No. 1994-N-05806] [High court of Justice, Queens' Bench Division]* . . . disclose in its findings a terrifying CJD plague emergency in both the U. K. and U. S. A. . . . the neuron destroying brain disease CJD Mad Cow Disease (Bovine Spongiform encephalopathy or BSE) first announced in the House of Commons March 20, 1996, as a first crossing of the species barrier by CJD in cow scrapie form to kill young adults over the past decade, with early symptoms of "aggressiveness" in a disease heretofore of old age . . . also concealed continuing deaths from neuron destroying CJD from '85 to '96 among 2000 dwarfed U. K. recipients of Human Growth Hormone (HGH) in the period 1959 to 1985, also processed in the USA to 7000 children, including respondent Mr. Roman, under original protocols of U.S. Professor Wilhelmi . . . **so this Court by such disclosure can use the California Rule of Professional Conduct issue in (2) below** . . . as to whether or not emergency attorney services were rendered respondent Mr. Roman when he was accused in Los Angeles of first degree murder of his mother 12/11/86 . . . and can also consider the findings of Justice Morland in some emergency manner so to expedite Los Angeles Federal District Court Class Action 96-7853 by Plaintiff Kevin Anditon, California Convict D96017 v.

---

* "[10 copies duly lodged with the Clerk and submitted under Rule 44 (a) (2) as certified by Solicitors Body/Irwin Mitchell and Early Day Motion in House of Commons at APP110/115]"

## QUESTIONS PRESENTED – Continued

Secretary of Health and Human Services et al, filed 11/4/96, [APP 35] to establish a joint class of British HGH child victims and USA HGH child victims using Justice Morland findings . . . for appropriate medical care and legal protection of this unique class produced by the protocols of the unfortunate Professor Wilhelmi . . . in that Mr. Anditon is a named plaintiff in the class before Justice Morland as on the U.K. HGH program and was convicted of a first degree murder assault on a visit to Los Angeles in 1986 at age 16 where he met Mr. Roman in the same jail cell in 1987, an indication of murderous growth hormone seizures originating from a bad batch of Human Growth Hormone processed by Professor Wilhelmi, causing neuron destruction.

(2) Where a probate Court order grants summary adjudication of an issue that a legal services agreement of 12/12/86 granting a lien interest in an inheritance is void whereby the Petitioners agreed to defend respondent Roman against the charge of murdering his mother on the ground that under California State Bar Rule of Professional Conduct 5-101, the Smiths failed to advise Roman to consult another attorney and give him time to do so: Does not the Judgment of Justice Morland and a Petition for Writ of Certiorari filed 9/17/88 in the criminal case, by Mr. Roman, prepared by petitioner Chester Smith [APP 126] [Supreme Court 88-611. Denied 12.5.88. 488 U.S. 981, 102 L.Ed. 561], showing Roman was treated with Human Growth Hormone from 1971 to 1985 under an NIH program, and forecasting accurately the CJD plagues of 1996 [" . . . incalculable results . . . thicket of miscalculations by adults dealing with our sickest children . . . deadly and unknown and unseeable viruses . . . "] and also the unsuccessful Los Angeles Federal Class action CV

## QUESTIONS PRESENTED – Continued

08706 filed 12/31/87 by Petitioner C. Smith to establish medicare and developmental disability rights for the HGH USA children including Roman, with petitioner C. Smith as a co-plaintiff, show Petitioner C. Smith always believed representation was a continuing emergency – so the attorney agreement of 12/12/86 and the Smith's right and duty to act to protect the victims of failed medical experiments was proper and required under the Fourteenth Amendment also incorporating Art. V, VI, and VIII, and also proper and appropriate for members of the Bar of this Court under the principles of the Nuremberg Code [United States v. Stanley et al. 1987 107 Sup. Cr. Rptr. 3054. 483 U.S. 669, 97 L.Ed.2d 550] where Mr. Roman was placed on the NIH Pituitary program in 1971 at UCLA for "treatment . . . justified for experimental purposes . . . ". [Ex. One below. Pg. 2439. Ltr. Dr. Kaplan to NIH Pituitary Agency.]

(3) As to a California State Bar Complaint dated 11/4/96 based on the decision appealed and the subject of this Petition [APP 116], and in view of the problem of obtaining any attorney to represent many murder charged/convicted defendants, can this Court address the problem of a model attorney lien agreement not requiring an accused to know another completely independent lawyer to approve it [opening the reviewing attorney to a subsequent complaint by client or Bar, in an essentially hostile world for defense counsel], so it is possible to represent murder charged defendants who exercise as well their Miranda rights, with a hope of getting paid, particularly in view of the California situation where with 288 pending death appeals, 148 need counsel [State Death Penalty Desk as of January 7, 1997].

## LIST OF PARTIES

The parties to the proceeding below were:

Petitioners Chester Leo Smith and Ann Lonergan Smith.

Respondents:

Timothy Scott Roman

The Co-Administrators of the Estate of Harriet Pearl Shapiro, Mr. Leo Altshuler and Mr. Matthew Spaulding.

**RULE 29.6 DISCLOSURE IS NOT APPLICABLE.**

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... i

LIST OF PARTIES ..... iv

RULE 29.6 DISCLOSURE ..... iv

TABLE OF CONTENTS ..... v

TABLE OF AUTHORITIES ..... vi

OPINIONS BELOW ..... 1

JURISDICTIONAL STATEMENT ..... 2

CONSTITUTIONAL PROVISIONS INVOKED ..... 5

RELEVANT STATUTES AND RULES ..... 5

STATEMENT OF THE CASE ..... 8

REASONS FOR GRANTING THE WRIT ..... 16

Counsel on 12/11/86 was confronted with a unique absolute due process emergency. It took Justice Morland to define the truth. And Solicitor David Body. A miracle.

CONCLUSION ..... 22

## TABLE OF AUTHORITIES

Page

CASES:

United States v. Stanley, et al., 107 Sup. Ct. Rptr. 3054, 483 U.S. 669, 97 L.Ed.2d 550 (1987) .....

[Discussed prior Petition for Certiorari filed 9/17/88. No. 88-611.

CONSTITUTION:

United States Constitution Art. V .....5, 20

United States Constitution Art. VI .....5, 10, 20

United States Constitution Art. VIII.....5, 10, 20

United States Constitution Art. XIV.....3, 4, 5, 10, 20

FEDERAL STATUTES:

42 USCS 6001, et seq. Developmentally Disabled Persons

OTHER SOURCES:

The Nuremberg Code. Control Council Law No. 10 of the Nuremberg Military Tribunals As referred to in United States v. Stanley

STATE OF CALIFORNIA

Rule 2-107.....5, 11

Rule 5-101.....6, 7

Bus. & Prof. Code 6068..... 7

Bus. & Prof. Code 6148.....7, 8

## OPINIONS BELOW

The unpublished opinion of the Court of Appeal of the State of California Second Appellate District Division Seven filed November 23, 1995 [Date mistyped 11/23/96] is not reported. It is reprinted as App. 1 infra, 1-31.

The Petition for Review of petitioners was Denied by the Supreme Court of the State of California August 14, 1996. App. 32.

The Petition for Rehearing to the Court of Appeal was denied 6/18/96. App. 33.

A Preliminary order as to Appeal(s) of December 20, 1994, by Division Five Second Appellate District Court of Appeal: DENYING DISMISSAL MOTION IN PART; CONSOLIDATING APPEALS . . . App. 103. At App. 105: "If there was a request before the trial judge to judicially notice certain files, then it would be appropriate, more expeditious, and less expensive, to simply make the same request to this court rather than have a lengthy and expensive appendix prepared."

This request was made. A different Division had the case. It was denied. Footnote 10. App. 24. The Courts below by excluding information as to Human Growth Hormone prevented themselves from having the type of information Justice Morland had to make his decision.

An ORDER SETTLING PETITION TO INQUIRE INTO CIRCUMSTANCES SURROUNDING AND CONSIDERATION FOR TRANSFERS OF INTEREST (Probate Code 11604) as to the hearing of August 2, 1994, in Department 11, Superior Court County of Los Angeles, was filed November 28, 1994. App. 97.

An ORDER GRANTING SUMMARY ADJUDICATION ESTABLISHING THAT THE CLAIM OF SMITH AND SMITH AGAINST THE ESTATE IS INVALID AND VOID AND THAT THE ESTATE THEREFORE HAS NO DUTY WITH RESPECT TO SAID CLAIM. Hearing of May 2, 1994. Filed August 16, 1994. App. 89.

## JURISDICTIONAL STATEMENT

At the 5/2/94 hearing, the trial court [App. 100]:

" . . . I am on another tack, Mr. Smith. I am on the tack of not whether you performed the services or not, and not how valuable your services were, but I am on the tack of Rule 5-202 . . . now in Rule 3-300 of the California Rules of Professional Conduct."

Petitioner's OBJECTIONS TO FORM AND CONTENT OF PROPOSED FINDINGS AND PROPOSED ORDER [GRANTING SUMMARY ADJUDICATION . . . ] were filed May 19, 1994, App. 86, stating:

"The proposed findings and proposed order are deficient in form and substance in that they propose to declare an entire attorney agreement automatically void because an attorney does not tell a prospective client charged with first degree murder (who called the attorney as a long time family acquaintance who knew he suffered a potentially mortal disease) to review the matter with another attorney before any action was taken.

"This is a violation of the due process rights and equal protection rights of both counsel and accused client

under Article XIV of the Constitution of the United States . . .

"The client has a due process right to obtain immediate action by an attorney for medical and defense reasons where he may lose his life without medical attention directed to a sophisticated disease and lose critical evidence if instant protective action is not taken . . .

"The client can always, under the laws of this State, which regulate procedures for legal action by attorneys for fees, have a court review the reasonable [sic] of the agreement and the circumstances of signing and the reasonableness of the charges and services.

"The agreement itself complied on its face with statutory requirements by stating in capitals at the beginning: You have a right to negotiate with an attorney as to the amount of any fee or a percentage of any contingency fee before you sign . . . agreement . . .

"To hold such an agreement automatically void is to place form over substance and violates Article XIV of the Constitution of the United States . . .

Petitioners filed 9/6/94 [App. 96]: OBJECTIONS . . . OF CHESTER LEO SMITH AND ANN LONERGAN SMITH TO FORM AND CONTENT OF PROPOSED ORDER SETTLING PETITION TO INQUIRE INTO CIRCUMSTANCES SURROUNDING AND CONSIDERATION FOR TRANSFERS OF INTEREST raising the same objections to this proposed Order as they did to the order granting summary adjudication filed 8/16/94.

Petitioners had filed 3/7/94 a REQUEST FOR JUDICIAL NOTICE [App. 101] that included a request that the

Court take judicial notice of: No. A 815402, THE PEOPLE OF THE STATE OF CALIFORNIA V. TIMOTHY SCOTT ROMAN, INCLUSIVE OF DECLARATION OF ARTHUR KOWELL, M.D. [the request thus included the Certiorari proceedings denied 12/5/88 at 109 S.Ct. 529, etc.]

Judicial notice taken would have included: Ex. 1 to 38 of criminal proceedings prepared by Smiths. Also the letter of UCLA Professor Kaplan [APP 64] to NIH Pituitary program to put Mr. Roman on the HGH program as " . . . treatment . . . justified for experimental purposes . . . ". This qualifies Mr. Roman to be protected by the Nurenberg Code. He took HGH from 1971 to program stoppage in 1985.

Almost all countries of present European Community had an HGH program [Ex. 2 below pg. 5247-5330: Austria, Belgium, Denmark [current scandal over post 85 use of natural HGH], Finland, France, West Germany, Greece, Norway, Spain, Sweden, Switzerland, Australia. Parent groups very involved abroad. Funding of this type of case in U.K., just cut off. App. 114. Early Day Motion/House of Commons.

Also judicial notice was requested of: Proceedings in the State of Maryland Case A 815402, re NIH depositions of Dr. Brown and Dr. Gibbs of the NIH Central Nervous Systems Study Unit . . . Also of: The West District Civil proceedings for attorney fees filed by the Smiths as Case No. S 005430 [APP. 101]:

The decision of the Court of Appeal states, App. 23 "The Smiths also contend that the lower court denied the Smiths due process under Article XIV of the U. S. Constitution by not taking judicial notice of the West District case . . . "

The same constitutional issues were before the Supreme Court of California as before Trial Court and Court of Appeal. All constitutional issues raised were rejected.

## CONSTITUTIONAL PROVISIONS INVOKED

United States Constitution, Art. V

United States Constitution, Art. VI

United States Constitution, Art. VIII

United States Constitution, Art. XIV

## RELEVANT STATUTES AND RULES

THE RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA AS APPROVED BY THE SUPREME COURT OF THE STATE OF CALIFORNIA IN EFFECT AS OF JANUARY 1, 1975. [AS PUBLISHED IN 14 CALIFORNIA SUPREME COURT REPORTER 2D] INCLUDING

**Rule 2-107. Fees for Legal Services.**

(A) A member of the State Bar shall not enter into an agreement for charge or collect an illegal or unconscionable fee.

(B) A fee is unconscionable when it is so exorbitant and wholly disproportionate to the services performed as to shock the conscience of lawyers of ordinary prudence practicing in the same community. Reasonableness shall

be determined on the basis of circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the reasonableness of a fee are the following:

(1) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The amount involved and the results obtained.

(4) The time limitations imposed by the client or by the circumstances.

(5) The nature and length of the professional relationship with the client.

(6) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(7) Whether the fee is fixed or contingent.

(8) The time and labor required.

(9) The informed consent of the client to the fee agreement.

**Rule 5-101. Avoiding Adverse Interests.**

A member of the State Bar shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the member of the State Bar acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms which should have reasonably been understood by the client, (2) the client is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

THE BUSINESS AND PROFESSIONS CODE OF THE STATE OF CALIFORNIA EFFECTIVE STATS. 1939 . . . SECTION 6068 (h):

"It is the duty of an attorney to do all of the following:

"(a) To support the Constitution and laws of the United States and of this state. . . .

"(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed. . . .

Business and Professions Code Section 6148:

[a] "Contract for services . . . must be reduced to writing in any case wherein it is 'reasonable foreseeable' . . . total expense . . . will exceed $1,000. . . .

(d) "Exceptions . . . Adherence . . . is excused in the following limited circumstances . . .

(1) "When legal services are rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is impractical . . .

(e) "Absent . . . an exception above, counsel's failure to comply with #6148 renders the agreement voidable at the client's option . . . in which case, the attorney will be limited to 'reasonable fees' for services rendered."

## STATEMENT OF THE CASE

The factual background to this Petition is set forth as well in a prior Petition for Writ of Certiorari of Mr. Roman (No. 88-611) prepared by Appellant Chester Leo Smith and filed 9/17/88 detailing the then totally non recognized EMERGENCY plague problems [then existent and coming] for the Human Growth Hormone children of whom Mr. Roman was one. Denied 12/5/88. **488 U.S. 981, 102 L.Ed. 561.**

The decisional background is set forth in a prior related appeal filed 1/27/94 No. B 072301, Division 7 of the Court of Appeal, Second Appellate District wherein it was stated:

"Timothy Roman was charged with the murder of his mother, Harriet Shapiro, killed on December 10, 1986; plaintiffs [Smiths] represented Roman from December 12, 1986 [date of signing of attorney agreement by Tim Roman and Chester Smith] until May, 1989; in October 1989 Roman was convicted of involuntary manslaughter of his mother and sentenced to time served. . . . Shapiro

died intestate owning two parcels of property; probate . . . was opened in December, 1986; Roman was her only child and sole heir. . . . On December 12, 1986, Roman executed an agreement for services with plaintiffs wherein he assigned to plaintiffs, to secure payment for legal services . . . **'I agree to pay you for your services the sum of $250.00 an hour, and I assign to you to secure payment for your services a lien on any real property in which I have an interest, by way of inheritance or otherwise."**

The Court in B 072301 reversed a judgment sustaining a demurrer without leave to amend for two defendant co-administrators named as alleged necessary party defendants in a Superior Court West District suit for attorney fees by the Smiths against Mr. Roman under the normal Business and Professions Code procedures of the State of California for determination of attorney fee issues.

The Court in B 072301 stated, "In the probate action, in June, 1992 . . . co-administrators noticed a hearing . . . on a Petition to Inquire . . . " and in essence the Court in B 072301 held the Probate Court would hear an issue as to whether the "lien on any real property" attached to the real property in the name of decedent with the response also raising an issue as to whether the decedent held this in trust for Mr. Roman as an illegitimate son of King Hussein of Jordan as shown by a recorded trust of 4/5/89 . . . **the decision in B072301 also showing a number of transfers of his interest therein to others/relatives set forth in a Petition to inquire.**

At App. 82 is the Undisputed Fact No. 28 of Mr. Roman that: "At the time that Roman signed the fee agreement, Smith knew that there was no other family member who was willing to be financially responsible."

The Superior Court sitting in Probate then essentially tried one issue only, and held by its ORDER GRANTING SUMMARY ADJUDICATION entered 8.16.94 that " . . . the Fee Agreement is void as in violation of public policy because it violated former rule 5-101 of the Rules of Professional Conduct of the State Bar . . . in effect in 1986 . . . [APP Vol. 01 A0032/42] . . . it created a security interest that allowed the Smiths to summarily collect their fees and . . . the Smiths failed to give Roman a reasonable opportunity to seek the advice of independent counsel of Roman's choice on the terms of the Fee Agreement . . . ".

The decisions below consider in effect the Smiths had no further claim to fees and the State Bar letter at APP 1-A showing it taking jurisdiction of this issue of fees.

The Smiths had timely filed [APP 1/B] Objections to form and content of proposed Findings and Proposed Orders objecting the "proposed order is constitutionally infirm under Articles VI and VIII and XIV. Such an order would proscribe immediate action by an attorney within one day of a defendant being charged with [murder] and subject to death penalty review and the order did not consider the doctrine of emergency representation of a client." [also APP 12563 to 12569].

Mr. Roman near the conclusion of a police interrogation the morning of 12/11/86 had also stated: "I want to speak to an attorney." [APP 109]

This Order Granting Summary Adjudication then became the basis for a similar order entitled "Order Settling Petition to Inquire" entered 11.28.94. These two orders were the subject of consolidated appeals. The Court of Appeal affirmed. The Supreme Court of California denied a Petition to Review. This Petition to Review denied 8/14/96 had raised also the new disclosures of March 20, 1996, in the House of Commons and in the United Kingdom of Creutzfeldt-Jakob Disease as a species-crossing plague. This Petition is filed within 90 days of such denial of Petition to Review.

Although timely requested, no Court below would take judicial notice of the criminal proceedings as to Mr. Roman in A 815402 the subject of the Writ Petition filed 9/17/88, or the Exhibits thereto. The Trial Court thus declined to take judicial notice duly requested of the said criminal proceedings and exhibits in A 815402 [APP10157 proceedings below]. Division 5 of the Court of Appeal below by a preliminary order as to the transcript on appeal, held, among other things, on December 20, 1994: "If there was a request before the trial judge to judicially notice certain files, then it would be appropriate, more expeditious, and less expensive, to simply make the same request to this court rather than have a lengthy and expensive appendix prepared." The opinion of the Court of Appeal below at footnote 10, pg. 19, denied this request to take judicial notice of the criminal proceedings.

One of the issues in the motion for summary adjudication of Mr. Roman was "3. The Fee Agreement is unconscionable under former Rule 2-107 for lack of informed consent in that, at the time it was signed,

Roman lacked the capacity to understand and consent to the Fee Agreement." [APP 10552]

The medical history of Mr. Roman was summarized in a 9 page Declaration of Dr. Arthur Kowell, [a board certified neurologist retained in 1987 by Chester Smith] and filed by the Smiths in May 1989 in support of a defense of incapacity, summarizing two years of investigation [APP 63-71]. It was offered by Mr. Roman in support of his motion alleging he was incapacitated when he signed the attorney agreement [at APP 33-34] so the Smiths should not be paid [for preparing this essentially successful defense].

The medical history of the HGH experiment in the United States is summarized in pg. 1 to 6 of the Reply Brief at APP 121. In his separate statement [APP 78, 79] in response to Mr. Roman's separate statement, Chester Smith notes: "Thus Mr. Roman is one of that tiny group of 10,000 experimentees now known to be the subject possibly of not only all known slow viruses often undetectable by any known test but whatever unknown viruses are brewing in the 10,000 children."

The response also refers to the taking by Chester Smith of the depositions of CJD specialists Dr. Paul Brown and Dr. Clarence Joseph Gibbs at the National Institute of Health [APP 79] in 1999.

The Court of Appeal opinion at page 15, in declaring the attorney agreement void, has the following incorrect summary of the facts:

"Furthermore, the 'emergency services' exception to Business and Professions Code Section 6148 does not

apply to the present case. The Smiths do not explain why they believe this exception applies, and under the facts here we cannot conjure up any reasonable explanation. The Smiths were not retained by Roman on the eve of his criminal trial. In fact, Roman contacted the Smiths almost at the inception of the case soon after he was arrested and charged with murdering his mother. Therefore, there was ample time to consult independent counsel."

The omission of any reference to the Human Growth Hormone experiment and to Mr. Roman as a child member of a disastrous international experiment makes this a . . . What Elephant? . . . paragraph.

The death was December 10. The detention early morning of December 11. Mr. Roman at an interrogation on December 11 in fact would state he wanted to see an attorney. Mr. Roman called Chester Smith from jail. The first meeting of Chester Smith with Mr. Roman was at the Van Nuys jail on December 11. The attorney/client agreement was signed December 12, 1989, at the required beginning of the client relationship. The police/District Attorney were now contacted [death penalty to be considered]. First court appearance was December 15. The concepts of Perry Mason were alive. Inferentially from e.g. the class action pleadings in the Federal Court, the viruses/monsters were immediate suspects to petitioner C. Smith.

The mother was the first to validate the implied findings of Justice Morland as to living viruses. Doctors have microscopes. Lawyers subpoenas. The mother wrote Reiss-Davis Child Study Clinic 2/6/76 [APP 120] when her son was 12: " . . . have you any definitive conclusion

as to what the 'Monster' emphasis means . . . ". And a Clinic Evaluation of 7/1/75 states [APP 120]: " . . . Mother concerned about Tim's apparent preoccupation with monsters reporting . . . he spends much of his time drawing pictures of **aggressive** appearing monsters . . . "

Inferentially her son was always drawing the monsters he saw in his brain. Copies were made at the jail over a two-year period, dated in the hand of Mr. Roman. APP 122 identifies the page location in Ex 1/2 below, of only some of the excellent drawings. Two main categories: Monsters **and assault weapons.**

The State Bar rules fail completely [in assuming technical lawyer conflicts of interest can be discussed at all at a first meeting with a person charged with murdering his mother] to comprehend how an experienced attorney and admitted long time acquaintance [who would chat with Mr. Roman as a child about him and his always best "friends"] had to approach that first meeting in a holding room at the Van Nuys jail, as in: "Timothy. The police say your mother's blood is splattered all over the ceiling, and walls and floor. What do your friends, the monsters, say about this? Did they tell you to do it?" The Reiss-Davis studies and the decision of Justice Morland show the monsters are not a delusion; they are a real part of some of the children, and exist. It is easier to believe correctly read they will tell us why the distant boundaries are seeking our destruction. It was inferentially clear at that first interview that Mr. Roman and his monsters would need a great deal of work before you took them public.

Reference is made to the first Petition for Certiorari filed 9/17/88 for a discussion of *United States et al. v.*

*Stanley et al.*, 107 Sup. Ct. Rptr. 3054 (1987) showing human experiments as a class for which equitable relief may be appropriate.

The Federal District Court made a mistake in rejecting the class action to establish medicare rights and developmental disability as a defense [and tracing mechanism] for the children of Doctor Wilhelmi. The exclusionary rules of our court systems scornfully rejected this defense – and the lawyers who raised the defense because their degrees said they should – and the plague continues. The mistake should be corrected. The 1988 Petition shows a first attempt to cause a correction. This is another.

The attorney agreement of December 12, 1986, signed by Timothy Scott Roman and Chester Leo Smith is valid on its face as in all events entered into under the emergency circumstances requiring an attorney under the Fourteenth Amendment to agree to represent a known Federal Medical Experimentee charged with murder who is subject to the mysterious brain disease known as Creutzfeldt-Jakob Disease, with all issues in the pleadings to be tried at the same time and in the same trial without summary adjudication of any one issue due to the complexity of this representation, in the pending proceeding filed in 1992 under the Business and Professions Code of the State of California Superior Court West District Action No. B086064, with the trial court taking the requested judicial notice of the criminal proceedings in the case of THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS TIMOTHY SCOTT ROMAN, NO. A815402.

## REASONS FOR GRANTING THE WRIT

Is not the hidden plague emergency incubating in both countries shown clearly then as an emergency facing petitioners throughout their representation of Mr. Roman:

(a) **By** Justice Morland establishing through wholly original judicial integration of enormously factual complications ". . . the gruesome possibilities and their imponderable probabilities . . . " [Judgment Pg. 57] leading to a series of 16 CJD deaths [a neuron destroying brain disease before only of aged people] occurring from 1985 through 1995 in this group of 2000 now adult recipients of HGH ["It is to be hoped . . . no more cases will occur but realistically that is an optimistic hope." Morland J. at pg. 87.

(b) **By** Justice Morland's ". . . gruesome possibilities . . . " as also inevitably applicable to the 7000 HGH dwarfed children treated in the U.S. under a National Institutes of Health program since both countries used the same protocols of U.S. Professor Wilhelmi [" . . . may not result in CJD for many years perhaps 15, 20, or even 30 years . . . "] [Morland J. Pg. 9].

(c) **By** a standard clinical word "aggressive" as to HGH children in both countries [NIHPub.No.86-2793] as shown by records of two young men on HGH in their originating countries, meeting in 1987, in the same jail cell, in Los Angeles Central Jail, both charged with murder [specifically Kevin Anditon on the British HGH program charged in Calif. Criminal Proceeding A 537561 with murdering a girl in May, 1986, and specifically Mr. Tim Roman on the U.S. program, charged with murdering his mother on 12/10/86 in case A 815402 filed

12/15/86] . . . with facts of total frenzy in both 1986 deaths, a meeting of statistically impossible improbability showing clearly the international ferocity of the amazing HGH batches of Professor Wilhelmi . . .

(d) **By** Medical Records Children's Hospital 13 July 1984, Sheffield England describing "aggressive" symptoms of Kevin Anditon, then age 14, and on the United Kingdom HGH program.

(e) **By** the dead mother herself, validating in 1976 what was going into the brain of her child, live viruses, in that she wrote Reiss-Davis Child Clinic 2/9/76 [APP 120] when her son was 12: " . . . have you any definitive conclusion as to what the 'Monster' emphasis means . . . " And from a Clinic Evaluation of 7/1/75 earlier: " . . . Mother concerned about Tim's apparent preoccupation with monsters reporting . . . he spends much of his time drawing pictures of aggressive appearing Monsters . . . "

(f) **By** the CJD plague emergency as to Human Growth Hormone having been broadened to a human species destroying plague by the instantly famous March 20, 1996, "House of Commons CJD Mad Cow Disease Announcement" by the British Government, of a species crossing CJD [" . . . a new strain of CJD . . . take more than 10 years after infection to reveal itself . . . cause holes in brain tissue . . . "] [the species destroying character disclosing itself at pg 13 of the Judgment re the New Guinea cannibal Kuru and other studies of Gadjusek/Gibbs/Zigas/Brown, the disease having then moved

down to pre-pubertal children as early as age 4 . . . eliminating new species members since none would be born if children died at age 4.

(g) **By** said species crossing killing younger and younger people in the age group of 30 [again a steady CJD reduction in age group elimination forecast by the "Kuru" studies] now regrettably cleanly confirmed as visualized in the British Journal **Nature** on October 24, 1996, by a new type of biochemical testing showing the biochemical fingerprints of prions from human deceased patients with the rare form of CJD are identical to those of prions from laboratory animals infected by cows with the disease.

(h) **By** the emergency created for a decade, at least until the Mad Cow Disease Announcement, by the position of the United States Attorney for the NIH, in civil and criminal litigation in the Federal courts, denying incubation of CJD in human growth hormone [APP 56]

(i) As stated in a motion of the U.S. Attorney in Maryland objecting to NIH depositions [of Gadjusek researchers Doctors Gibbs and Brown] by Attorney Chester Smith to prepare a defense to the first degree murder charge against Mr. Roman. [APP 55-56]

[The U.S. Attorney is speaking] "As to Roman, petitioners hold the opinion he did not have CJD in 1986 when he murdered his mother because by now, two years later, according to the customary progression of the disease, he should be dead."

Doctors Brown and Gibbs were deposed in April, 1989, thanks to Maryland Judge McKenna, and said no

such thing, carefully and even courageously making it clear their on-going research was exactly as Justice Morland has stated], to wit, there can be decades long incubation of CJD before appearance of terminal symptoms.

And also the U.S. Attorney so moved in Los Angeles in defeating a class action filed by attorney Chester Smith and Mr. Roman on 12/31/87 for the 7000 to 10,000 HGH children in the United States to have a right to option for Federal Medicare and status as developmentally disabled: United States District Court Central District Action entitled Timothy Roman and Chester Leo Smith, Plaintiffs vs. Secretary of Health and Human Services, et al. Case No. C-87 08706 (HAH) (B). Dismissed 1988.

**By** attorney Chester Smith in preparing, on behalf of Mr. Roman, a Petition for Writ of Certiorari filed 9/17/88, which forecast this CJD plague that had to come on the basis of observed facts. **Roman v. Superior Court. Denied 12.5.88. 488 U.S. 981, 102 L.Ed. 2d 561.** At Pg. 20 " . . . the 10,000 are a Federal . . . experiment . . . resulted in experimentees with an array of potential diseases of unknown types and diverse effects . . . ".

The court should then consider equitable relief to expedite the formation of the class in Los Angeles Central Federal District Court Action No. 96-7853 filed 11/4/96 by Kevin Anditon and Mrs. Burgess Anditon, so as to join the two nations and other European countries in this scientific battle against a great disease, by making certain the experimentees are humanely taken care of and available for medical examination if they so elect. As to the children: What is our Text? . . . From our scrolls . . . at APP 46.

The Court should consider the attorney lien agreement of 12/12/86 to be considered a valid agreement under the Nuremberg Code and under the Fourteenth Amendment to the United States Constitution as it incorporates Articles V, and VI, and VIII where the record shows that counsel retained recognized emergencies from the date of representation of a murder defendant only recognized by others and publicly since 1996 . . . emergencies that required a civilized counsel to act in the constitutionally required manner shown where mandated to aid the oppressed and those defined as "experimental" patients by the Nuremberg Code.

The Court should consider a model attorney agreement for counsel answering calls for "emergency" representation, it being assumed in all events that to be charged with first degree murder is normally considered an emergency by the citizenry.

The Petition for Writ of Certiorari filed in 1988 by Petitioner C. Smith correctly forecast the plagues of 1996. It is indicated these plagues are considered "British". That is not correct. Regrettably our advanced instrumentation has confirmed the species barrier has been crossed. Compare: The Lancet. August 3, 1985, for an explanation.

The next forecast is elementary. We have decided recently our DNA has "errors". We are busily correcting the "errors". It has been decided in return the error is "us".

Our most advanced instrumentation now tells us clearly that the enemy within has crossed the "species

barrier" and the whole fury of a mighty enemy has been turned on us, species human.

"It" has taken dead aim [by its two now disclosed final solutions for any species] . . .

The reduction of the age of death below the capacity to reproduce by "holes" in the neurons, as the energies that created the mass of the neurons are now taking that mass back to energy [Species tend to be endemic at high altitudes] [University of Chicago Text *CIRCA* 1942].

And the commencement of the crossing of the species barrier by all plagues of all species, to eradicate our species in relentless war.

It is submitted the 10,000 children now almost all adults are an invaluable asset, unique in history, and the Federal courts can provide appropriate injunctive relief for members of this class as Federal Medical experimentees, only if they so elect to seek Medicare and status as developmentally disabled persons, in that their problems originate from the same protocols of the well intended unfortunate Professor Wilhelmi.

It is noted Mr. Anditon is in prison for killing an eight year old girl. He seeks only to go to prison in the land that gave him his medications containing the enemy within. A fair trade.

Any relief requested herein should also be considered then under these unusual circumstances by reason of the passage written by the late Polish historian, Jasienica, and quoted in **The International Lawyer**, for April, 1971,

as stating "the conditions under which the legal draftsman must work in trying to encompass the unknown future":[1]

> Attempt a definition of the motive that attracts this group of writers to history
>
> That attraction is the graceless beauty which is alien to all ideas of symmetry
>
> Its love of ambuscades and surprises which equate to cruelty and inexpressible waste
>
> All are elements which for those who remember Greek antiquity
>
> Comprise the concept and idea of fate.

## CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the writ should be granted, and relief granted as prayed.

Respectfully submitted

CHESTER LEO SMITH
*Counsel of record*

Chester Leo Smith and
Ann Lonergan Smith

Dated: January 8, 1996.

---

[1] "The Probable Necessity of an International Prison in Solving Aircraft Hijacking". By: Chester Leo Smith. **The International Lawyer**. American Bar Association. April, 1971.

**APPENDIX**

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

| | |
|---|---|
| Estate of HARRIET PEARL SHAPIRO, aka SUSAN CABOT ROMAN, Deceased. | B086064 |
| CHESTER L. SMITH, ANN L. SMITH, Appellants and Cross-Respondents, v. TIMOTHY SCOTT ROMAN. Respondent and Cross-Appellant. | (Super. Ct. No. P712879) (Filed Nov. 23, 1996) |

APPEALS from a judgment of the Superior Court of Los Angeles County. Arnold Gold, Judge. Affirmed in part, and reversed and remanded in part. Cross-appeal dismissed.

Chester L. Smith and Ann L. Smith in pro per.

Turner Gerstenfeld Wilk Tigerman & Young, Bert Z. Tigerman for Respondent and Cross-Appellant.

Appellants Chester L. Smith and Ann. L. Smith appeal from three probate court orders.[1] The first order awarded respondent Timothy S. Roman, heir of decedent, $4,139 in sanctions against the Smiths under Code of Civil Procedure section 128.5. The second order granted summary adjudication of the issue that a legal services agreement, whereby the Smiths agreed to defend Roman against the charge of murdering his mother, is void. The probate court found the Smiths violated former rule 5-101 of the State Bar Rules of Professional Conduct because the agreement gave the Smiths a security interest in Roman's inheritance from his mother, and the Smiths failed to both advise Roman to consult another attorney regarding the agreement's terms and give him time to do so. The last appealed order settled a petition brought under Probate Code section 11604 to inquire into the validity of the legal services agreement's provision assigning Roman's lien interest in his inheritance.[2]

Roman cross-appeals the order settling the petition in that it finalized the probate court's denial of summary adjudication of three issues. The first issue is that the

---

[1] In doing so, the Smiths violate California Rules of Court, rule 15 by not supporting statements by appropriate reference to the record and by referring to materials not made part of the record below. In addition, although the Smiths meet the 50-page limit of rule 15, they do so by single spacing significant portions of their briefs. Pursuant to California Rules of Court, rule 18, we exercise our discretion to strike references to materials not made part of the record below, and deem the rest of the briefs as if they were properly prepared.

[2] On December 20, 1994, Division Five of the Second District Court of Appeal held that these orders were appealable.

Smiths are not entitled to distribution from Roman's mother's probate estate because the legal services agreement created a mortgage lien on real property sold during administration of the estate. The second denied issue is that the agreement gave the Smiths a financial interest in the outcome of their client's criminal case, and the third issue is that the agreement is unconscionable for lack of informed consent.

We conclude no triable issues of material fact exist as to the whether the legal services agreement is void. Accordingly, we affirm the grant of summary adjudication and order pursuant to Probate Code section 11604. We reverse and remand the order for sanctions under Code of Civil Procedure section 128.5 with directions the probate court specify in writing the factual reasons for its order. Lastly, we dismiss the cross-appeal because Roman is not "aggrieved" within the meaning of Code of Civil Procedure section 902.

## FACTS AND PROCEEDINGS BELOW

This case stems from a petition filed under Probate Code section 11604 to determine the validity of a lien the Smiths placed on real property inherited by Roman from the estate of his deceased mother. Harriet Pearl Shapiro (aka Susan Cabot Roman). The Smiths based their lien on a legal services agreement signed by then-22-year-old Roman while incarcerated for the charge of murdering his mother on December 10, 1986.

On December 11, 1986, the day after Roman was arrested, he had telephoned Mr. Smith, an attorney and acquaintance who had known Roman since he was a

child and knew Roman had serious health problems as a result of being a panhypopituitary.[3] That same day, Mr. Smith visited a tired Roman. Roman appeared scared and upset to Mr. Smith.

On December 12, 1986, Mr. Smith brought several documents, including the legal services agreement, for a miserable and apprehensive Roman to sign. The agreement stated Roman assigned the Smiths a lien on any real property Roman would inherit.[4] Mr. Smith had Roman read the agreement out loud without explaining its terms. Then Roman signed the agreement.

The Smiths represented Roman in the murder case until May 22, 1989, when the criminal court granted Roman's motions for a mistrial and removal of the Smiths as his counsel. In a later trial with new defense counsel, Roman was found guilty of involuntary manslaughter in

---

[3] The parties define the panhypopituitary condition as a lack of pituitary hormones.

[4] The agreement states in pertinent part: [¶ ] YOU HAVE A RIGHT TO NEGOTIATE WITH AN ATTORNEY AS TO THE AMOUNT OF ANY FEE OR A PERCENTAGE OF ANY CONTINGENCY FEE BEFORE YOU SIGN THIS AGREEMENT. . . . THE BELOW AGREEMENT IS THEN OUR AGREEMENT: [¶ ] In consideration of your rendering legal services in this matter, to represent me in connection with my defense and my real and personal property interests, I agree to pay you for your services the sum of $250.00 an hour and *I assign to you to secure payment for your services, a lien on any real property in which I have an interest, by way of inheritance* or otherwise, including real property (including two lots in the name of Susan Cabot Roman also known as Harriet Pearl Shapiro) located at 4601 Charmion Lane, Encino California 91316. . . . " (Emphasis added.)

November of 1989. Less than a year later, on September 18, 1990, the Smiths filed their notice of lien assignment.

On January 19, 1994, Roman moved for summary adjudication of two main issues and three subissues. Roman's Issue No. 1 claimed the Smiths were not entitled to distribution from the probate estate for three reasons. One, the legal services agreement (referred to as the "Fee Agreement") created a mortgage lien for the Smiths as to certain real property. Two, as mortgagees the Smiths had no interest entitling them to distribution, and three, the probate sale of the property cut off their security interest. Issue No. 2 contained three subissues and argued the Fee Agreement is void and violative of former rules 5-101 and 2-107 of the State Bar Rules of Professional Conduct.[5]

Both subissues (a) and (b) of Issue No. 2 urged the Fee Agreement gave the Smiths an adverse financial relationship with Roman and the Smiths violated former rule 5-101 by not advising Roman to consult another attorney regarding the agreement's terms and not giving Roman time to consult another attorney. In addition, subissue (a) claimed the Fee Agreement gave the Smiths a financial interest in the outcome of Roman's criminal case, and subissue (b) stated the agreement created a security interest allowing the Smiths to summarily collect disputed fees. Subissue (c) of Issue No. 2 contended the Fee Agreement is unconscionable under former rule 2-107 for lack of informed consent because Roman lacked the capacity to enter into the agreement when he signed it.

---

[5] In 1989, rule 3-300 of the Rules of Professional Conduct superseded former rule 5-101, and rule 4-200 superseded former rule 2-107. The new rules kept the former rules' requirements.

In Roman's reply papers, he objected to the Smiths' multiple violations of requirements to oppose a motion for summary adjudication of issues. After the hearing on the motion was continued from March 21, to April 18, 1994, the Smiths filed an amended separate statement.

Roman then filed further reply papers and objections to the Smiths' amended statement.

At the same time as he lodged his reply, Roman moved for $6,537.50 in sanctions under Code of Civil Procedure section 128.5. Roman based his motion for sanctions against the Smiths on the ground they filed their amended separate statement in bad faith.

The hearings on the motions for summary adjudication and sanctions were continued to May 2, 1994.

At the hearing on the sanctions motion, the probate court found the Smiths' "service and filing of the amended separate statement after the first hearing date of March 21 constituted actions and tactics that were both frivolous, in that they were totally and completely without merit, and that they were untimely; and in addition, were not authorized by Code of Civil Procedure section 437c, and were in bad faith." The court accordingly granted $4,139 in sanctions in an order issued on July 15, 1994.

At the May 2, 1994 hearing, the probate court stated it had struck the Smiths' amended separate statement.

The probate court heard the petition under Probate Code section 11604 on August 2, 1994.

On August 15, 1994 the probate court denied Roman's motion for summary adjudication of Issues 1,

2(a) and (c), and granted summary adjudication of Issue 2(b).

On November 23, 1994, the probate court issued an order settling the petition to inquire into circumstances surrounding and consideration for transfer of interests. In the order, the court below determined the Smiths' notice of a lien interest is invalid because the underlying Fee Agreement is void and against public policy, in violation of former rule 5-101 of the State Bar Rules of Professional Conduct.

## DISCUSSION

### I. FAILURE TO GIVE A CLIENT THE OPPORTUNITY TO SEEK INDEPENDENT COUNSEL REGARDING A RETAINER AGREEMENT SECURING PAYMENT OF ATTORNEY'S FEES BY A LIEN INTEREST IN INHERITED PROPERTY VIOLATES FORMER RULE 5-101

The standard of review of a summary adjudication of issues is the independent or de novo standard. Consequently, we review the probate court's ruling, and not its rationale. (*Stratton v. First National Life Insurance Co.* (1989) 210 Cal.App.3d 1071, 1083.)

Quoting *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064-1065, the Fourth District Court of Appeal in *Sweat v. Hollister* (1995) 37 Cal.App.4th 603, 606-607 explained that in independently reviewing a summary judgment motion, we apply the same three-step analysis used by the superior court. Accordingly, first " 'we identify the issues framed by the pleadings. . . . ' " Second, " 'we determine whether the moving party's showing has established facts which

negate the opponent's claim and justify a judgment in movant's favor.' " Third, " 'we determine whether the opposition demonstrates the existence of a triable, material factual issue.' "

In appealing the grant of Roman's motion as to Issue 2(b), the Smiths do not follow this three-step analysis. Instead, they assert twenty-three points which we discuss after applying the three-step analysis.

The issues raised in Roman's summary adjudication motion derive from the only pleading here, the petition filed by the estate's co-administrators in order to determine the validity of Roman's transfers of interests in his inheritance from his mother. Included as the transfers at issue was Roman's assignment to the Smiths of a lien interest on real property through the legal services agreement retaining the Smiths to defend Roman in his criminal case. Therefore, the first part of the three-part test is met.

Secondly, we look at whether Roman set forth facts warranting summary adjudication of Issue 2(b) of his motion. Issue 2(b) asserts the Smiths' fee agreement gave the Smiths an adverse financial relationship with Roman by creating a security interest allowing the Smiths to summarily collect disputed fees. According to Issue 2(b), the agreement is void in violation of public policy in that it violated former rule 5-101 because the Smiths neither advised Roman to consult independent counsel regarding the agreement's terms nor gave him time to do so.

In support of Issue 2(b), Roman offered 15 facts. As supporting evidence. Roman primarily used Mr. Smith's deposition testimony. He also relied on the fee agreement,

the Smiths' notice of lien assignment, the probate estate co-administrators' petition and the Smiths' separate civil action seeking enforcement of the lien which they filed in the West District of the Los Angeles County Superior Court sitting in Santa Monica.

The first fact, Roman's Fact No. 10, was that the fee agreement provides that Roman assign to the Smiths a lien on real property in the probate estate as security for attorney's fees. For evidence of this fact, Roman attached a copy of the fee agreement to his motion.

Roman's second fact, Fact No. 12, was that on December 12, 1986, at Smith's request, Roman read the agreement out loud and then signed it. For evidence, Roman relied on the fee agreement and Mr. Smith's deposition testimony that Mr. Smith's custom was to ask clients to read out loud agreements they signed. Mr. Smith testified that Roman "read it [the agreement] through out loud, and then he signed."

The third fact, Fact No. 13, was that before signing the agreement, Roman did not ask Smith any questions about the agreement. Roman relied on Mr. Smith's deposition testimony that Roman "basically didn't ask any questions, and he didn't enter into any disputations."

The fourth fact, Fact No. 21, was that before Roman signed the agreement, Mr. Smith did not advise Roman to consult another lawyer. Roman referred to Mr. Smith's deposition taken September 28, 1993, where he was asked if he suggested to Roman that he consult another attorney. Mr. Smith testified, "I don't think so and it would have been unlike me to. And it was also no time to call a

constitutional convention on this situation." As supporting evidence, Roman also used Mr. Smith's deposition testimony on September 7, 1993, when Mr. Smith answered "no" to the question of whether he advised Roman to consult another lawyer regarding the fee agreement.

Roman's fifth fact, Fact No. 22, was that before he signed the agreement, Mr. Smith did not give him time to consult another attorney. In making this assertion, Roman relied on most of the evidence in support of his fourth fact.

According to the sixth fact, Fact No. 23, when Roman signed the agreement. Mr. Smith did not advise Roman of any conflict of interest from the agreement's terms. As evidence, Roman referred to Mr. Smith's May 7, September 23 and September 28, 1993 depositions. At the September 28 deposition. Mr. Smith testified that "I did not discuss with him any possible conflict that might arise." When asked at his September 23, 1993 deposition whether he explained to Roman at the time of the signing that Mr. Smith had a financial interest in the kind of sentence Roman received, Mr. Smith replied that "I didn't sit down – I told you what we did. I had him read the agreement."

The seventh fact, Fact No. 26, was that when Roman signed the agreement, Mr. Smith had a reasonable expectation that he would be paid pursuant to the agreement. In support of this fact, Roman relied on Mr. Smith's testimony at his September 23, 1993 deposition. There, he answered "yes" to the question whether Mr. Smith "had

some reasonable expectation that you would get compensated by – from Timothy Roman for your services to Timothy Roman."

Roman's eighth fact, Fact No. 27, was that when Roman signed the agreement, Mr. Smith knew that the probate estate was the only source of payment. As the basis for this assertion, Roman relied on Mr. Smith's May 7 and May 28, 1993 deposition testimony. Mr. Smith testified that Roman "would never have any money other than the money he would get from the estate unless he got lucky. . . . " Mr. Smith answered in the affirmative to the question that "the only way you would get paid is when he [Roman] got a distribution from the estate."

According to Roman's ninth fact, Fact No. 38, Mr. Smith expected to be paid from the estate right after notifying the estate's co-administrators of his lien. For evidence, Roman relied on the part of Mr. Smith's May 7, 1993, deposition testimony stating that Mr. Smith "expected the lien to attach to the distributive share," and that he anticipated his first chance to get paid was when the estate was closed.

Roman's tenth fact, Fact No. 39, was that on September 18, 1990, the Smiths filed their notice of Roman's assignment to them of a lien interest in inherited realty. In support of this fact, Roman attached to his motion a copy of the Smiths' "NOTICE OF ASSIGNMENT BY TIMOTHY ROMAN (To Chester Leo Smith and Ann L. Smith) OF LIEN INTEREST IN REAL PROPERTY INHERITED BY MR. TIMOTHY ROMAN".

The eleventh fact, Fact No. 40, was that the $230,000 in attorney's fees claimed by the Smiths in their notice are

for defending Roman in the criminal case. Page 1 of the Smiths' notice of lien assignment states that Roman secured legal services in the criminal case. According to page 2 of the notice, the lien "was and is to secure payment for legal services now due, owing and unpaid, and in the minimum sum of $230,000.00."

Roman's twelfth fact, Fact No. 41, was that Mr. Smith expected the estate's co-administrators to honor his notice of assignment of Roman's lien interest. As evidence, Roman used Mr. Smith's May 7, 1993 deposition, where Mr. Smith testified that he sued the probate estate's co-administrators for not honoring the Smiths' lien claim.

According to the thirteenth fact, Fact No. 42, after the Smiths filed their notice, the co-administrators filed their petition under Probate Code section 11604 to determine the validity of Roman's transfers of interests. To prove this fact, Roman attached a copy of the petition to his summary adjudication motion.

The fourteenth fact, Fact No. 43, was that the Smiths sued the co-administrators in the Santa Monica superior court for not honoring the Smiths' assignment notice. Roman referred to the same deposition testimony in support of his twelfth fact.

Lastly, Roman asserted, as Fact No. 44, that the Smiths' Santa Monica lawsuit sought declaratory relief, an order that the co-administrators pay the Smiths from the probate estate and an order barring the co-administrators from distributing money from the estate. As support, Roman attached the Smiths' complaint.

Former rule 5-101 of the Rules of Professional Conduct provided: "A member of the State Bar shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the member of the State Bar acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in the manner and terms which should have reasonably been understood by the client, (2) the client is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto."

Pursuant to Business and Professions Code section 6077, former rule 5-101 was binding on the Smiths. Former rule 5-101 governed retainer agreements which give counsel an "ownership, possessory, security or other pecuniary interest adverse to a client." (See official comments to Rules Prof. Conduct, rule 3-300.) Accordingly, multiple cases have held former rule 5-101 applicable to retainer agreements where lawyers secure payment of fees through clients' real property interests. (See, e.g., *Brockway v. State Bar* (1991) 53 Cal.3d 51, 64-65; *Hawk v. State Bar* (1988) 45 Cal.3d 589, 601.)

Since the fee agreement at issue here was secured by Roman's assignment of his inheritance to the Smiths, it was clearly binding. Moreover, Roman's facts in support of his motion for summary adjudication of Issue 2(b) at the minimum demonstrated the Smiths violated the second requirement of former rule 5-101 to give Roman an opportunity to consult independent counsel regarding the agreement's terms. Therefore, Roman met the second

part of the three-part analysis of summary adjucation motions.

Under this three-part analysis, the burden of proof then shifts to the Smiths to demonstrate the existence of at least one triable issue of material fact. To meet this burden, the Smiths had to present admissible evidence in their opposition to Roman's summary adjudication motion. (Code Civ. Proc., § 437c, subdivision (d).) In reviewing the parties' evidence, the courts strictly construe the moving party's evidence and liberally construe the opposing party's evidence. (*Stratton, supra,* 210 Cal.App.3d at p. 1083.)

In opposing Roman's summary adjudication motion, the Smiths initially filed a response to Roman's separate statement of facts. The majority of this initial response violates Code of Civil Procedure section 437c(b) by not indicating whether the Smiths agreed or disagreed that each fact is undisputed. Significantly, the Smiths often did not meet section 437c(b)'s requirement to reference supporting evidence. Furthermore, the Smiths violated the requirement of subdivision (b) that their separate statement respond "to *each* of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed." (Italics added.) Although the Smiths filed an amended response correcting some of their first response's defects, we disregard this response because it was filed without leave of the probate court.

Of the fifteen facts asserted by Roman, the Smiths objected to the first, second, third, fifth and fifteenth facts.

The Smiths agreed with the fourth fact that Mr. Smith did not advise Roman to consult another attorney, referring to Mr. Smith's declaration in opposition to the summary adjudication motion. There, Mr. Smith described the professional backgrounds of both Smiths and an attorney, James Barnes, who they associated with by the time of the preliminary hearing in the criminal case against Roman. Even if Barnes were available to Roman to discuss the terms of the fee agreement, as an associated attorney he cannot serve as independent counsel for purposes of former rule 5-101. (*Connor v. State Bar,* (1990) 50 Cal.3d 1047, 1058.)

Significantly, the Smiths agreed that at the time the fee agreement was signed, Mr. Smith did not advise Roman of any conflict of interest from the agreement's terms.

The Smiths also agreed with the tenth and thirteenth facts regarding the filing of the notice of lien assignment and the petition under Probate Code section 11604.

Replying on Mr. Smith's declaration filed in opposition to Roman's summary adjudication motion, the Smiths disagreed with the seventh, eighth, ninth, eleventh, twelfth and fourteenth facts alleged by Roman. However, nowhere in Mr. Smith's nine-page declaration and 364 pages of attachments does he refute these facts. Although Mr. Smith declared that "Plaintiffs [the Smiths] always recognized that they might not be compensated in the full agreed amount of their services", this statement does not contradict Roman's seventh fact that when Roman signed the fee agreement. Mr. Smith expected to

be paid for legal services provided pursuant to the agreement.

Absent the Smiths' showing of any triable, material factual issue, we affirm the trial court's grant of summary adjudication of Roman's Issue 2(b).[6]

## II. APPELLANTS' TWENTY-THREE 'POINTS' DO NOT SUPPORT DENIAL OF RESPONDENT'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES

The Smiths' opening brief makes twenty-three arguments or "points." The Smiths first argue their Fee Agreement did not violate former rule 5-101 because their agreement contained a valid charging lien and because the "emergency services" exception to business and Professions Code section 6148 applies.[7] In support of their position the Fee Agreement provided for a valid charging lien, the Smiths cite *Cetenko v. United California Bank* (1982) 30 Cal.3d 528, 531-532 and *Hawk, supra,* 45 Cal.3d 589.

---

[6] We note that the Smiths in their opening brief practically compel this ruling with their admission that former rule 5-101 required allowing Roman to consult outside counsel on the fee agreement: "The orders appealed from mean the Rules require, as to any person charged with a capital crime/to retain an attorney who requests any form of security interest/such person has to be able to call at least two State Bar members to come to jail, independently of the other, to validate any proposed agreement."

[7] The "emergency services" argument also is set forth in the Smiths' twenty-first argument.

The issue in *Cetenko, supra,* was whether a prior lien on a judgment in favor of an attorney for legal fees prevailed over a subsequent judgment creditor's lien perfected pursuant to Code of Civil Procedure section 688.1. Unlike the present case, the *Cetenko* case did not concern whether former rule 5-101 was violated, and did not concern the circumstances of the fee agreement at issue there. Therefore, *Cetenko* is inapposite.

In contrast, the California Supreme court in *Hawk, supra,* dealt with whether former rule 5-101 was violated. There, attorney Richard Hawk entered into two fee agreement transactions with clients Mr. and Mrs. James Mederos whereby the couple gave Hawk a lien on real property they owned. In the first transaction, the Mederoses gave Hawk a promissory note secured by a trust deed on realty. Hawk prepared the note without the amount filled in, and told Mr. Mederos that the fee would be $15,000. After the Mederoses executed the note, and only in Mrs. Mederos' presence, Hawk filled in the amount of $20,000. When Mrs. Mederos objected, Hawk replied that the additional $5,000 was an advance against litigation costs. In the second transaction, Hawk acquired a $10,000 promissory note secured by another trust deed on the same property. (*Id.* at pp. 593-594.)

Finding the terms of both transactions fair and reasonable, the State Bar Court hearing panel nevertheless determined Hawk violated former rule 5-101 because he did not fully disclose the terms in language that his clients could understand, and he did not advise and give the Mederoses the opportunity to have the first transaction reviewed by independent counsel. (*Hawk, supra,* 45

Cal.3d at p. 594.) The state Supreme Court agreed Hawk violated former rule 5-101.

Citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, the high court explained failure to give clients time to seek independent counsel is not a mere technical violation. (*Hawk, supra,* 45 Cal.3d at p. 598.) Where an attorney acquires an interest adverse to his or her client, "rule 5-101 merely requires the attorney to fully explain such transactions, to offer only fair and reasonable terms, to give the client a copy of the agreement, and to give the client an opportunity to seek independent legal advice. . . . The addition of a requirement that the attorney allow the client an opportunity to seek independent legal counsel if the fee arrangement gives the attorney a secured interest in the client's real property seems modest, to say the least." (*Id.* at p. 601.)

Here, the Smiths do not contest Mr. Smith never told Roman he could seek the advice of independent counsel, and never gave him time to do so. Clearly, former rule 5-101 was violated.

Furthermore, the "emergency services" exception to Business and Professions Code section 6148 does not apply to the present case. The Smiths do not explain why they believe this exception applies, and under the facts here we cannot conjure up any reasonable explanation. The Smiths were not retained by Roman on the eve of his criminal trial. In fact, Roman contacted the Smiths almost at the inception of the case, soon after he was arrested and charged with murdering his mother. Therefore, there was ample time to consult independent counsel.

The Smiths' second argument or "Point Two" is that even if the Fee Agreement were invalid under former rule 5-101, the lien would survive as a claim for quantum meruit, and the Smiths' lien would have priority over other liens.[8] As support for this position, the Smiths cite *Spires v. American Bus Lines* (1984) 158 Cal.App.3d 211, *Hansen v. Jacobsen* (1986) 186 Cal.App.3d 350, Civil Code section 2897, *Cetenko supra.*[9] *Bluxome Street Associates v. Fireman's Fund Insurance Co.* (1988) 206 Cal.App.3d 1149, and *Bandy v. Mt. Diablo Unified School District,* (1976) 56 Cal.App.3d 230.

*Spires, supra,* concerned a trial court's refusal to award attorney's fees to lawyer Benjamin Anderson on behalf of his legal services to Geneva Spires. Anderson apparently was Spires' fifth attorney to handle her personal injury action. However, Anderson never formally appeared in the action, and he apparently did not enter into any attorney-client agreement with Spires. (*Spires, supra,* 158 Cal.App.3d at p. 214.) Since there was no proof of a retainer agreement between Anderson and Spires, the First District Court of Appeal applied the quantum meruit theory. (*Id.* at p. 216.)

The issue in *Hansen* was "whether a previously discharged attorney who has a contractual lien on a prospective judgment may file a *notice* of lien in the pending action." (*Hansen, supra,* 186 Cal.App.3d at pp. 354-355;

---

[8] In support of their first two arguments, the Smiths quote verbatim from the Rutter Group: California Practice Guide, Vols. 1 and 2, Family Law (1994), even though their fee agreement was made in Roman's criminal case.

[9] As discussed *ante, Centenko* is inapplicable.

emphasis in original.) The First District Court of Appeal ruled in the affirmative, reversing the trial court's decision to strike a notice of lien. In *Hansen*, personal injury plaintiffs Inez and Hans Hansen had entered into a written contingency fee agreement with the law firm of Bostwick and Rowe, Inc. The agreement provided that advanced attorney's fees would be a lien on future judgments. A year after the Hansens substituted the law firm of Thomson & Kilduff as their counsel of record, attorney Robert Bostwick and his law firm filed a notice of lien in the Hansens' pending action. The trial court granted Thomson & Kilduff's motion to strike the notice.

Notably, neither *Spires* nor *Hansen* concerns the validity of the retainer agreement itself – the main issue in the present case. Moreover, unlike the appellants in *Spires*, the Smiths and Roman entered into a written retainer agreement. Therefore, the two cases cited by the Smiths do not apply here.

Likewise, Civil Code section 2897, which generally provides liens have a priority according to when they were created, is in apposite because the issue of lien priority was not raised by the petition under Probate Code section 11604 and the summary adjucation [sic] motion. For the same reason, *Bluxome, supra*, 206 Cal.App.3d at p. 1158 is not controlling. Although the validity of the contractual lien in that case was also at issue, compliance with the Rules of Professional Conduct was not in question.

*Bandy* concerned "whether an attorney, who was employed to prosecute personal injury actions under a contingent fee contract and for whom other counsel was

substituted while the litigation was pending, is entitled to a lien in a stated amount upon the proceeds of an anticipated recovery by his former client by settlement or judgment." *Bandy, supra,* 56 Cal.App.3d at p. 232. Unlike the case at bar, the terms of the fee contract in *Bandy* were not at issue, and the Rules of Professional Conduct were not discussed.

The Smiths' third argument is that the West District superior court handling the Smiths' complaint should decide the issues. Their "Point Four" is that assuming former rule 5-101 invalidated the fee agreement, the issue of quantum meruit will be decided by the appellate court as an unresolved issue in the West District action. The Smiths' fifth argument is that all the unresolved issues in their West District action would be resolved in that action. Points Six and essentially Seventeen assert that all other issues under Probate Code section 11604 were triable factual issues to be decided in the West District action. The seventh, eighth and ninth arguments are that paragraphs (1), (2) and (3), respectively, of the probate court's order on the petition consisted of improper findings. Points Ten and Eleven state that Roman ratified the validity of the fee agreement.

The Smiths provide no legal support for their third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and seventeenth arguments. As a result, we need not consider these arguments. (*In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278, citing *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; see also 9 Witkin, California Procedure (3rd ed. 1985) appeal, § 479. p. 469.) Further, as to their eighth and ninth arguments, the Smiths lack standing because they are not

aggrieved parities with respect to any trusts. (Code Civ. Proc., § 902.) As to the eleventh argument, as well as Point Thirteen, the Smiths contend that they presented issues in opposition to the summary adjudication motion. Yet, the Smiths significantly omit to state what issues of material fact they raised in opposition to Roman's summary adjucation [sic] motion, and the record does not show the Smiths created a triable issue of material fact. Their conclusory assertion is insufficient to create an issue.

The Smiths' twelfth argument is that the probate court's summary adjudication and petition orders were improper because Code of Civil Procedure section 437, subdivision (f)(1) was not met. We reject the Smiths' twelfth argument that the statutory subdivision was not met. Subdivision (f)(1) requires the granting of a motion for summary adjudication of an issue of duty if the motion completely disposes of the issue. Since Roman's motion went directly to the issue of whether the estate owed a duty to honor Roman's alleged lien assignment to the Smiths, it clearly complied with the statutory requirement.

Points Fourteen and Fifteen concern an order staying the West District action. Since the order was not made in the present action, it is an improper subject for this appeal.

The Smiths' sixteenth argument is that the Smiths would be entitled to a priority of claim under the common fund theory using Probate Code section 6540, subdivisions (a) and (b). This statute provides for family

allowances from a decedent's estate. In making this argument, the Smiths have ignored Division Five's order filed December 20, 1994 dismissing the appeal from the family allowance order.

Point Eighteen of the Smiths' opening brief is that the probate court acted improperly in ruling on the summary adjudication motion because Roman failed to file a pleading in response to the petition. The Smiths also contend that the lower court denied the Smiths due process under Article XIV of the U.S. Constitution by not taking judicial notice of the West District case and an unspecified appellate court decision.

With respect to the first contention in Point Eighteen, we agree with the probate court that if an issue is joined, then it does not matter there is no responsive pleading filed by the moving party. Since the summary adjudication motion centers on the validity of the Smiths' fee agreement, and the petition under Probate Code section 11604 seeks a judicial determination of the Smiths' notice of lien assignment based on the fee agreement, Roman's lack of a responsive pleading to the petition does not bar a ruling on his motion. Furthermore, Probate Code section 11604 does not require a responsive pleading, only notice of the hearing on the estate's beneficiary, and a hearing on section 11604 is in rem. (Prob. Code § 11604, subdivision (d); 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate § 329, p. 364.)

As for the judicial notice issue in Point Eighteen, the Smiths provide no legal support requiring judicial notice, and Evidence Code section 452 gives courts discretion to

grant or deny such notice.[10] In addition, it is unclear which appellate court decision the Smiths refer to in contending due process was denied.

In Point Nineteen, the Smiths argue they should be awarded a $230,000 judgment with prejudgment interest since the date of filing the West District action. This relief is inappropriate here because the action here merely is for a determination of the validity of Roman's alleged assignment of a lien interest in his inheritance to the Smiths. Moreover, the Smiths provide no legal support for their position.

The Smiths' twentieth argument concerns sanctions, and so is discussed below. Their twenth-third [sic] argument is a request for sanctions.[11]

Point Twenty-Two of the Smiths' opening brief argues it was unconstitutional for the trial court to find

---

[10] The Smiths also request that we take judicial notice of the following five groups of documents: (1) Boxes 1 and 2 offered into evidence at the summary adjudication hearing, (2) Roman's criminal case, (3) a Maryland court matter allowing out-of-state depositions ordered by the California criminal court, (4) the Smiths' West District action, and (5) a conservatorship case brought by Roman's great aunt, Mildred Kahan. None of these documents are subject to mandatory judicial notice. (Evid. Code, § 451.) Since any relevant evidence from these matters is already part of the record below, coming in as attachments to the moving and opposing papers regarding summary adjudication, we deny the Smiths' request. We also note that only relevant material may be noticed. *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.

[11] This request is denied for lack of evidentiary and legal support, in violation of Rules of Court, rule 26, subdivision (e), and rule 41.

the Smiths had to give Roman a reasonable opportunity to consult independent counsel and the Smiths' reliance on alleged exigencies was unfounded. The Smiths provide no legal support for their twenth-second [sic] arguments until their reply brief.

In the Smiths' reply brief, they cite *Juge v. Sacramento County* (1993) 12 Cal.App.4th 59. They misstate *Juge* as holding that "where a Judicial Officer sees no merit in the moving papers, but raises an issue in the responsive papers . . . which issue seems to require granting such motion, that 'due process' would require a continuance to permit the responding party to respond to that point." In fact, the appellate court held that "when the trial court grants a summary judgment motion on a ground of law not explicitly tendered by the moving party, due process of law requires that the party opposing the motion must be provided an opportunity to respond to the ground of law identified by the court and must be given a chance to show there is a triable issue of fact material to said ground of law." (*Id.* at p. 70.) Significantly, the appellate court went on to state: "We imply no view on whether due process requires notification of and an opportunity to respond to the 'new' ground of law *prior* to the trial court's ruling on the summary judgment motion. Even if that were the rule, there was no infringement of due process in this case. . . . " (*Id.* at p. 71; original italics.)

Here, the probate court did not grant summary adjudication on an issue not raised by Roman. Rather, the court below granted Roman's motion as to Issue 2(b). Therefore, the holding cited by the Smiths is inapposite.

## III. THE SANCTIONS ORDER REQUIRES A DETAILED RECITATION OF THE CONDUCT JUSTIFYING THE ORDER

The standard of review for an award of sanctions is the abuse-of-discretion standard. *Dolan v. Buena Engineers, Inc.* (1994) 24 Cal.App.4th 1500, 1504.

"Where the issue on appeal is whether the trial court has abused its discretion, the showing necessary to reverse the trial court is insufficient if it presents facts which merely afford an opportunity for a different opinion: 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge. To be entitled to relief on appeal from the result of an alleged abuse of discretion it must clearly appear that the injury resulting from such a wrong is sufficiently grave to amount to a manifest miscarriage of justice; . . . ' [Citation]" (*Winick Corp. v. County Sanitation District No. 2 of Los Angeles County* (1986) 185 Cal.App.3d 1170, 1176, emphasis omitted.)

Code of Civil Procedure section 128.5 gives courts discretion to impose sanctions for "bad-faith actions or tactics that are frivolous." Subdivision (b) of section 128.5 defines the phrase "actions or tactics" as including opposing motions "if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994." This definition clearly applies to this case, as the entire action concluded by December of 1994.

Section 128.5, subdivision (b) defines the term "frivolous" as "(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party."

In contesting the probate court's sanctions based on the Smiths' filing an amended separate statement without leave of the court, the Smiths improperly refer to their papers filed below, and argue that the probate court violated their due process rights without citing any legal support for this argument. As Roman correctly points out, we have authority to deem the Smiths' appeal from the sanctions abandoned. However, like the First District Court of Appeal in *Balesteri v. Holler* (1978) 87 Cal.App.3d 717, 720, we choose to consider the Smiths' brief on the sanctions as if it were properly prepared so as to decide the sanctions issue on its merits.

Although the Smiths fail to discuss whether the probate court abused its discretion, we disagree with Roman this failure requires us to decide the sanctions issue under the independent standard of review.

We also find that review of this issue does not necessitate further briefing by Roman. Accordingly, we deny Roman's request to file a supplemental response.

Code of Civil Procedure section 128.5, subdivision (c) provides the sanctions order "shall be in writing and shall recite in detail the conduct or circumstances justifying the order." The probate court's order in the present case does not meet the second requirement, merely stating the Smiths' service and filing of their amended separate statement "was a bad faith action and tactic that was frivolous, within the meaning of C.C.P. § 128.5."

Although Judge Arnold Gold verbally explained why he awarded sanctions to Roman at the May 2, 1994, hearing, a "trial judge's on-the-record oral recitation of reasons for imposing sanctions in insufficient." *Childs v.*

*PaineWebber Inc.* (1994) 29 Cal.App.4th 982, 996. Since Judge Gold's written order does not contain a "written factual recital, with reasonable specificity, of the circumstances that led the trial court to find the conduct before it sanctionable" under section 128.5, the case must be remanded for the probate court to either enter a new order pursuant to section 128.5, subdivision (c), or vacate the sanctions order. (*Id.* at pp. 996, 997.)

## IV. THE PROBATE COURT DID NOT ABUSE ITS DISCRETION IN MAKING ITS ORDER ON THE PETITION UNDER PROBATE CODE SECTION 11604

The probate court's order pursuant to Probate Code section 11604 stated: "The Agreement for Services between TIMOTHY SCOTT ROMAN and SMITH and SMITH dated December 12, 1986 is void and in violation of public policy in that it violated former rule 5-101 of the Rules of Professional Conduct of the State Bar of California, in effect in 1986, and by virtue thereof the Notice of Assignment by TIMOTHY SCOTT ROMAN of Lien Interest and in real property inherited by TIMOTHY SCOTT ROMAN filed by Smith and Smith on September 18, 1990 is of no force or effect and is invalid."

Probate Code section 11604 provides in pertinent part: "[¶] (a) This section applies where distribution is to be made to any of the following persons: [¶] (1) The transferee of a beneficiary [¶] (2) Any person other than a beneficiary under an agreement . . . of a beneficiary. . . . [¶] (b) The court . . . may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the

amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary [¶] (c) The court may refuse to order distribution . . . if the court finds either of the following: [¶] (1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable. [¶] (2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence. . . . "

Since section 11604 authorizes probate courts to examine transfers of interests made by a probate estate's beneficiary, and to refuse to distribute estate property to honor those transfers, any orders made under section 11604 are discretionary and thus subject to the abuse-of-discretion standard of review. Under this standard of review, a discretionary ruling is disturbed only upon a showing of a "clear case of abuse" and a "miscarriage of justice." *Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.

The probate court's order on the petition was inextricably connected to its order on the summary adjudication motion. This connection is reflected in the order's referral to the prior summary adjudication order, and it was appropriate given the parallel purposes of Probate Code section 11604 and former rule 5-101 of the Rules of Professional Conduct. The purpose of section 11604 is "to protect heirs from the consequences of unfair agreements. . . . " *Estate of Boyd* (1979) 98 Cal.App.3d 125, 136.[12] This purpose mirrors the purpose of former rule 5-101,

---

[12] Although *Estate of Boyd* refers to former Probate Code section 1020.1, this former statute's substantive provisions have been restated in Probate Code section 11604.

Rules of Professional Conduct, to protect clients from unfair attorney's fees agreements.

Given the strong evidence in support of a finding that the fee agreement was invalid and against public policy, and the notice of lien assignment was based solely on this fee agreement, the probate court did not abuse its discretion in ordering that the Smiths' notice of lien assignment was of no force and effect.

## V. ROMAN MAY NOT CROSS-APPEAL A JUDGMENT IN HIS FAVOR

Roman's cross-appeal is problematic because the probate court invalidated the fee agreement that was the foundation of Roman's summary adjudication motion. As a result, it is hard to conceive how Roman is "aggrieved" within the meaning of Code of Civil Procedure section 902.[13]

"One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment." (*Alameda County v. Carleson* (1971) 5 Cal.3d 730, 737.) Since the petition under Probate Code section 11604 specifically ordered and adjudged that the Fee Agreement "is void and in violation of public policy" and "by virtue thereof" the Smiths' lien assignment notice "is of no force or effect

---

[13] Although Roman was not a "party" in the record below, Roman, as a beneficiary of the probate estate subject to the proceedings below, was not required to make himself a party to the record. This is because probate proceedings are in rem. 9 Witkin. Cal. Procedure (3d ed. 1985) Appeal, § 138, pp. 147-148; 12 Witkin, Summary of California Law (9th ed. 1990) Wills and Probate, § 329, p. 364.

and is invalid", Roman cannot be "aggrieved." Therefore, he may not appeal.

## DISPOSITION

Both the order granting summary adjudication establishing that the Smiths' claim against the probate estate is invalid and that the estate has no duty regarding the claim, and the order settling the petition under Probate Code section 11604 are affirmed. The order awarding sanctions under Code of Civil Procedure section 128.5 is reversed and remanded with instructions the probate court specify in writing the conduct justifying the sanctions. The cross-appeal is dismissed.

Each side to bear that side's own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, J.

We concur:

LILLIE, P.J.

WOODS(Fred), J.

Second Appellate District, Division Seven, No. B086064
S054630

IN THE SUPREME COURT OF CALIFORNIA

---

Estate of HARRIET PEARL SHAPIRO

CHESTER L. SMITH, Appellant

v.

TIMOTHY SCOTT ROMAN, Respondent

---

(Filed Aug. 14, 1996)

Petition for review DENIED.

Ronald W. George
Chief Justice

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION: 7 DATE: 06/26/96

CASENO: 2 Civil B086064
Los Angeles NO. P712879
(S.C. Judge: ) >
Cross Ref: B092936 B072301

ESTATE OF HARRIET PEARL SHAPIRO
Other

vs.

SMITH, CHESTER LEO
Appellant

ROMAN, TIMOTHY
RESPONDENT

* * * DOCKET EVENTS * * *

| | | | |
|---|---|---|---|
| 61 | 06/07/96 | RPF | REHEARING PETITION FILED. |
| 62 | 06/18/96 | PRD | PETITION FOR REHEARING DENIED. |

AGREEMENT FOR SERVICES

YOU HAVE A RIGHT TO NEGOTIATE WITH AN ATTORNEY AS TO THE AMOUNT OF ANY FEE OR A PERCENTAGE OF ANY CONTINGENCY FEE BEFORE YOU SIGN THIS AGREEMENT. YOU ALSO UNDERSTAND THE TOTAL CHARGES FOR LEGAL SERVICES CANNOT BE ESTIMATED AND THAT THE CHARGES WILL VERY SUBSTANTIALLY EXCEED THE SUM OF FIVE THOUSAND DOLLARS. THE BELOW AGREEMENT IS THEN OUR AGREEMENT:

In consideration of your rendering legal services in this matter, to represent me in connection with my defense and my real and personal property interests, I agree to pay you for your services the sum of $250.00 an hour and I assign to you to secure payment for your services, a lien on any real property in which I have an interest, by way of inheritance or otherwise, including real property (including two lots in the name of Susan Cabot Roman also known as Harriet Pearl Shapiro) located at 4601 Charmion Lane, Encino California 91316. Said time charges shall be applicable to the services of any attorney you elect to associate into this matter, as well as your own services. I agree to pay any costs reasonably necessary for this action or reimburse you if you advance same (including Court costs, deposition costs, service costs, investigation costs, witness fees, expert witness fees and costs, medical and psychiatric costs and other costs). You have no obligation to advance any costs. In the event I am not able to repay you for any costs advanced prior to the recoupment of monies, then the amount of any such advance of costs by you will also be a lien in your favor against the said interest. I have in

any such real property. It is understood there will be substantial costs for medical and psychiatric examination and preparation, including the rendition of services by Dr. Mohan Nair, and I also agree to pay for said costs.

You have no obligation to appeal any adverse decision or judgment or verdict unless we so agree.

I also agree to pay a retainer as soon as any monies are available to me, and in the sum of $20,000.00. It is also understood there is no way (in view of the complications of this matter) of computing the total amount of fees.

Dated: Dec. 12, 1985

SMITH & SMITH

by /s/ Chester Leo Smith
Chester Leo Smith
Ann Lonergan
Smith

/s/ Timothy Scott Romen
Except you are to arrange for the proper notice of appeal to be filed in a timely manner if I am delayed in obtaining other counsel.

CHESTER LEO SMITH, ESQ. (STATE BAR NO. 22102)
636 E. WALNUT, SUITE 112
PASADENA, CALIFORNIA 91101
1 818 432 4673
1 818 432 6704

Plaintiff in propria persona
Attorney for other Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| KEVIN PATRICK ANDITON, [CALIFORNIA CONVICT D96017 PATRICIA MAUREEN BURGESS-ANDITON, CHESTER LEO SMITH, ON BEHALF OF PROPOSED CLASS<br><br>Plaintiffs<br><br>SECRETARY OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES THE STATE OF CALIFORNIA THE DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES HUMAN GROWTH FOUNDATION, RESPONDENT PARENTS COUNCIL FOR GROWTH NORMALCY, RESPONDENT<br><br>DEFENDANTS/ RESPONDENTS | CASE NO. 96-7853 MRP(JGx)<br><br>COMPLAINT CLASS ACTION DECLARATORY RELIEF<br><br>(Filed Nov. 8, 1996) |

## COMPLAINT

Plaintiffs allege:

1. This is a civil action under the Constitution and laws of the United States.

2. In view of the Creutzfeldt-Jakob Disease [CJD] plague in the United Kingdom [U.K.] . . . as announced in the House of Commons on 3/20/96 . . . and as researched in particular in the Findings of this critical 19 July 1996 decision of The Hon. Mr. Justice Morland of the Royal Courts of Justice [At pg. 1 to 102 attached exhibit pages] [as to CJD deaths and mortal illnesses also occurring within the 2000 young people who took Human Growth Hormone under a U.K. government program between 1959 to program stoppage in 1985 with the deaths of three United States children] . . . this complaint primarily seeks to establish as soon as reasonably possible through action in a Federal Court of the United States of America the Findings of Mr. Justice Morland to establish the basis for a class [preferably with National Institutes of Health supervision so current record keeping is possible of the health of the HGH recipients] consisting of the 7000 to 10,000 young people in the United States who took Human Growth Hormone processed through identical protocols originating prior to 1959 with Professor Wilhelmi of the United States, so each member of such class will have the elective right to have access to medicare, and have all medical expenses paid, and have the right to elect a status in their state of residence of developmentally disabled under the Developmental Disabilities Act of 1984.

3. Title of Cause before The Hon. Mr. Justice Morland:

"UNREVISED JUDGMENT

"The CJD Litigation"

"The Plaintiffs appearing in Schedule 2 to the Order made on 14th November 1994 [Plaintiffs]: [versus]

The United Kingdom Medical Research Council [First Defendant]

The Secretary of State for Health [Second Defendant]

IN THE HIGH COURT OF JUSTICE.

QUEEN'S BENCH DIVISION

NO. 1994 N 05806.

Royal Courts of Justice

Date of Hearing: 16th April – 24th May 1996.

4. Primary Jurisdiction is invoked as follows:

Under Amendments to the United States Constitution: I, V, VI, VIII ["cruel and unusual punishments"], and XIV.

Also Art. I, Section 8 of the U.S. Constitution. Also Art. III ["Treaties made . . . foreign states, citizens, subjects . . . "

Also Under 42 USCA 6000, *et seq.* (The Development Disabilities Act of 1984) [also as applicable to plaintiff

Kevin Anditon, California Convict D 96017 and plaintiff herein].[1]

Also the following: Re bases for jurisdiction where a Federal Court should address a plague now in process both in the United Kingdom and in the USA, where Justice Morland now has Mr. Anditon and Mrs. Burgess-Anditon as members of Class B in the parties plaintiff before him, and Mr. Anditon and Mrs. Burgess-Anditon are also plaintiffs before this Court:

28 USCA 1781 Re U.K. Conventions re Taking of Evidence Abroad. Also: 21 USCA 382 [Drugs, Biological Products]. Also: 22 USCA 2101. Mutual Participation in International Health Research. Also Pub. L. 86-610 The International Health Research Act of 1960. "It is the purpose of this chapter . . . to advance the status of the health sciences in the United States and thereby the health of the American people through cooperative endeavors with other countries in . . . health research, research planning, and research training. . . . "

5. A true copy of the unbelievably thorough UNREVISED JUDGMENT by this Judicial Charles Darwin is attached as an Exhibit at pages 1 to 85. [Compare: Pg. 187

---

[1] Forecasting the plague in 1988 [and that it can only grow more virulent] was not that hard to foresee if one attended the University of Chicago that Robert Maynard Hutchins designed including biology classes in the years 1940/42 where "Species tend[ing] to be endemic at high altitudes" by reason of cosmic ray strikes foresaw "Kuru" of the [high altitude] upper highlands of New Guinea and John Von Neumann's mirror design for Fermi that matches the probable explanation for the neuron "destruction" of CJD.

Petition for Writ of Certiorari Case No 88-611. Denied: 1988. Using quotation on behalf of Mr. Roman from Mr. Darwin at page 26. This Petition forecast in 1988 this 1996 CJD plague, then observably breeding in human brains.

6. At pages 86 to 102 attached exhibit pages is the typed version of what Mr Justice Morland described at pg. 86 as "a short oral judgment". The documents speak for itself. Relevant excerpts of the judgment are quoted below. It was intended to be read in its entirety.

7. A copy of the judgment was obtained in October, 1996 from Mr. David Body [of Irwin Mitchell Solicitors], the lead solicitor for the plaintiffs who presented much of this evidence from his/their research.

8. To quote the Judgment, at page 3:

"The Plaintiffs in the action are divided into two groups. Group A and Group B. In Group A are 11 plaintiffs either the representatives of 8 recipients who have died of CJD or 3 plaintiffs who are suffering from diagnosed CJD. In Group B are 87 plaintiffs who were recipients of HGH who happily have not contracted CJD and hopefully never will but only time will tell. . . . [At page 87] "It is to be hoped that no more cases will occur but realistically that is an optimistic hope."

9. This plaintiff class consisted of young adults who took HGH and if deceased, also their parents.

(a) Plaintiff Kevin Anditon was a plaintiff – as a British citizen and resident [as well as a United States citizen by birth in Chicago Illinois] who took HGH under the British program from 1982 to 1985 [Pges. 132 to 142

include validating information as to Mr. Anditon including pages showing him while taking HGH having "aggressive' symptoms . . . 144, 147, 148] [See NIH Fact Sheet published 1986. Pg. 124 re "Aggressive" as a characteristic of the CJD behavior] [This word removed from the NIH Fact Sheets after information of the case of People v. Roman]. Mr. Anditon's mother, Mrs. Burgess-Anditon, is also a plaintiff in the case before Justice Morland.

(b) Mr. Anditon was arrested in Los Angeles, California in 1986 and thereafter convicted of first degree murder of a young girl in Case No. A 537561. He is now California Convict D96017. He is not hospitalized. He has not seen an endocrinologist in years. He is in the general prison population, a serious to terrible mistake in medical judgment in view of the opinion [Pg. 116]. Mr. Anditon [on the British HGH program] and charged with first degree murder, met Mr. Tim Roman [on the USA HGH program] [charged with the murder of his mother also in 1986 and represented also by Chester Leo Smith attorney] in 1987 in a jail cell in Los Angeles County Central Jail. Both alleged acts indicated a frenzy of physical activity by the accused assailant This is some indication of the similarity of ferocity into affected/infected neurons in the HGH processed in both countries under the originating protocols of United States Professor Wilhelmi [Pg. 21 Judgment].

(10) Claims for relief (including those against the District Attorney of the County of Los Angeles, and the State of California) are cognizable by the Court pursuant to 28 USCA 1331 and 1332. Also 42 USCA 1981 and 1983 and 1985 and 1986 and 1988. Also 28 USCA 2283, 2284.

This Court has jurisdiction of these claims also by virtue of 28 USCA §1343. All claims for relief, including those against any individual State, are within the jurisdiction of the Court as granted by 28 USCA §1331 (a) and 1343 (4) and 1361 and 2201 and 2202; also Title 18 USCA 1702 and 2520. Venue lies in this District under 28 USCA 1391 (e).

(11) Disclosure is made of prior class action filed 12/31/87 case No. CV 87 08706 entitled TIMOTHY SCOTT ROMAN . . . CHESTER LEO SMITH AS ATTORNEY . . . DISMISSED 10/31/88. It requested similar class relief. It is respectfully submitted the case presented by Justice Morland shows new facts. The matter of researching [to have any decision herein effective for the class members as of 12/31/88] will take place in the future. Also the position of the United States attorney as to CJD not being an incubating over the decades disease is now thoroughly and cleanly a serious error, and always should have been seen as an error in view of the July, 1988 article in Neurology, by Dr. Paul Brown, also deposed in April of 1989 by Chester Leo Smith. See page excerpts at 179 186.

(12) Re: Habeas Corpus. Also: 28 USCA 2241 [Writs of Habeas Corpus . . . shall not extend to a prisoner . . . unless (6) He, being a citizen of a foreign state . . . [etc.]"

The remedy is being investigated. . . .

---

These pages inserted also in the 1996 Federal Complaint are from Pages 61 to 68 of Federal Class Action filed December 31, 1987 No. CV 87 08706 with Chester Smith as a plaintiff as well as Mr. Roman.

## THE FIRST COHORT

## THE PROBABLE IMPORTANCE OF THE 10,000 IN HUMAN HISTORY

This has to be addressed, and in a manner calculated to make scientists read, and think, outside their specialty.

Only the requested relief can place this really amazing group in a coherent status so scientists can apply their mathematical genetic models to reality.

* * *

The non-recognition of the importance of the 10,000 brings up the problem of the NIH "attitude" toward the 10,000.

The NIH entered into a somewhat standard form contract with Westat Inc. which repetitiously refers to the 10,000 as a "study cohort".

This is a remarkably ill-chosen phrase.

The word "cohort" does have "group" as an alternate dictionary meaning and is therefore accurate in its intended usage – *but for this "group"* it was too chillingly accurate if what is postulated here as to the significance of the 10,000 is in any semblence correct . . . for . . .

> "The . . . Imperial legion . . . was divided into ten cohorts, and fifty-five companies . . . The first cohort which always claimed the post of honour and custody of the eagle, was . . . the

> most approved for valour and fidelity . . . The safety and honour of the empire was principally intrusted to the legions. . . . " (Gibbon *Decline and Fall* I)

That marching beat of our past echoes that the chief function of a soldier of Caesar was *to die.*

Once you apply the great records and books of our species to the 10,000, once you conceive even the possibility that the safety of the species may be, in the face of these terrible virus enemies, entrusted to some (even unto one) of the 10,000, then the Court can also conclude the relief prayed for should be granted in its entirety – because careful care and attention to the 10,000 may be crucial to the very survival of our species.

Is there any real "proof" that the 10,000 are so rare? Could all, or any one member, of the class of 10,000 reasonably justify all of the laborious expensive detail the setting up of a court ordered lifetime class will necessitate? Is this just a legal technique by a trial lawyer on the prowl? Is all this worth while if it turns out it is only "even unto one".

The conclusive responsive argument was made by Darwin before any now alive were born:

"No doubt it is possible as Mr. G. H. Lewes has urged, that at the first commencement of life many different forms were evolved; but if so we may conclude that only a very few have left modified descendants. For, as I have recently remarked in regard to the members of each great kingdom, such as the Vertebrata, Articulata & c., we have distinct evidence in their embryological homologous and rudimentary structures that within each kingdom all

the members are descended *from a single progenitor.*" (Emphasis added)

Eliot said words to the effect once that people who do not like to read about the dead past do not understand that history is *that* which we *are.*

The above quotation knew in its polite ("No doubt it is possible . . . ) articulation that its author, in the midst of the tumult directed against him ("Great is the power of steady misrepresentation") was telling us to remember that *he* knew what *he* was, from whence *he* had come, and that *he* knew *he* almost certainly would not know *himself* in one hundred million years – if his species still was alive then in any form –

> "Judging from the past, we may safely infer that not one living species will transmit its unaltered likeness to a distant futurity."
>
> " . . . natural selection is daily and hourly scrutinising [sic], throughout the world, the slightest variations; . . . silently, and insensibly working, *whenever and wherever opportunity offers . . .* "
>
> (Emphasis of the author)

No one doubts Darwin/Russell any more. So little doubt them that their great works are "boring".

AIDS tell us it is a little too soon to be bored with what causes your life and your death.

Into each of the 10,000 has been poured the distilled essence of the pathogens of hundreds of thousands of dead, with totally undeterminable future result.

Such a medical and personal tragedy, so unintentional, so incomprehensibly beyond the intentional reckoning of even the most savage of the S.S. beasts (P. 759-89) surely has to have a Wallace-Darwinian meaning.

Ask yourself?

Would Wallace and Darwin, those two glistening articulators of who we are and what we are, given the chance, and just "on the chance" the 10,000 seem to be what they seem to be – would those two embark on a new voyage of *HMS 'Beagle'* into the study of the 10,000?

* * *

What is the conclusion?

So much human tragedy has to have a Wallace-Darwinian meaning. The 10,000 are our *First* Cohort. *They* have the post of honour and the custody of the eagle of the human race. From the moment of defective birth, the 10,000 have been in the forefront of the only battle that counts, the only battle that can never be won, the battle for the survival of our species even beyond *nova* and black hole. These maimed children, each now an erect new-born baby in solitary survival hale, surely encompass many an island of hidden treasure, only awaiting discovery in the revolving spendor of this new (nm) archepelago of the Galapagos, endless reflecting genetic mirrors coding into each and every compass point of the origin and future of this and hardier species, more calculated by conquered terror to survive in the totality of the indifference of this miraculously merciless universe from which shadowed swirls and stars have cast down the origin and return of species.

## CONCLUSION

The only remaining problem is to write the concluding paragraph so it satisfies Alfred Russell Wallace and Charles Darwin, and, most difficult, Blake –

### This Is Our Text

"Set ye Uriah in the forefront of the hottest battle, and retire ye from him, that he may be 'smitten, and die."

" . . . But the thing that David had done displeased the LORD."

---

WHEREFORE, plaintiffs pray judgment as follows:

1. That plaintiffs, and each member of the class that shows evidence of having taken Human Growth Hormone, are entitled to a lifetime medical care under Article XIV, and other relief as prayed for herein by the establishment of a class.

2. That specific relief as to the imprisonment of Mr. Anditon under the facts alleged, will be set forth hereinafter. It is requested an early order be made for his hospitalization by the State of California.

3. For the establishment of the class of HGH children as each entitled to elect within the state of their residence to the status of developmentally disabled, and without having to re-prove the facts as shown in the decision of Justice Morland.

4. For attorney fees and costs to Chester Leo Smith under all existent legal rights to such fees, but this relief also is subject to amendment to make more certain.

5. For perpetuation of testimony on such conditions as the Court deems proper.

6. For any other equitable or declaratory judgment proper.

7. For such other and further relief as the Court may deem proper, including preliminary orders as proper pending trial.

CHESTER LEO SMITH
Plaintiff and Counsel to
Co-Plaintiffs

---

**VERIFICATION**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing FEDERAL CLASS ACTION COMPLAINT and know its contents.

* * *

Executed on 10/31, 1996, at San Louis Obispo STATE OF California I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mrs. Patricia Maureen Burgess Anditon
Type or Print Name

/s/ Patricia M. Burgess Anditon
Signature
/s/ Chester Leo Smith

---

CHESTER LEO SMITH, ESQ. (STATE BAR NO. 22102)
ANN L. SMITH, ESQ. (STATE BAR NO. 94331)
12121 Wilshire Blvd., Suite 1103
Los Angeles, California 90025
310/476-6486

In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

| | |
|---|---|
| ANN LONERGAN SMITH, CHESTER LEO SMITH,<br><br>Plaintiffs,<br><br>v.<br><br>ANTHONY SPAULDING, MATTHEW SPAULDING AND LEO ALTSHULER, AS CO-ADMINISTRATORS OF THE ESTATE OF HARRIET PEARL SHAPIRO; THE ESTATE OF HARRIET PEARL SHAPIRO; TIMOTHY S. ROMAN, and DOES 1 to 100, Inclusive,<br><br>Defendants. | CASE NO.<br>SC 005 430<br><br>SECOND AMENDED COMPLAINT |

1. Plaintiffs allege for Second Amended Complaint. This pleading with attachments and exhibits consists of 143 pages.

2. (a) Exhibit A-1 is the NOTICE TO DEFENDANT TIMOTHY S. ROMAN OF "CLIENT'S RIGHT TO ARBITRATION" under Sections 6200-6206 of the California Business and Professions Code as then served on defendant Tim Roman at time of personal service. No election of a right to arbitration has been made.

(b) Exhibit A-2 is the written attorney agreement of

* * *

**THIRD CAUSE OF ACTION**
**(For Declaratory Relief)**
***Haupt v. Charlie's Kosher Market* 17 C.2d 843**

**PLAINTIFFS VS. DEFENDANTS TIMOTHY SCOTT ROMAN AND CO-ADMINISTRATORS MATTHEW SPAULDING AND LEO ALTSHULER AND DOES 1 TO 50.**

23. Plaintiffs incorporate by reference paragraphs 1 through 11 at pages 1 through 6, and also the First and Second Causes hereof.

**24.** On and about December 12, 1986, at Los Angeles, California, and within four years prior to the original filing of this Complaint, Plaintiffs and Defendant(s) (Tim Roman specifically) entered into a written agreement (Exhibit A) whereby Plaintiffs agreed to represent Defendant Tim Roman as attorneys in relevant legal proceedings affecting his legal rights. These included legal proceedings arising out of his being arrested by the Los Angeles Police Department on and about December 11, 1986, for an alleged violation of Penal Code Section 187 (a) (alleged Felony murder on 12/10/86 of his mother, Harriet Pearl Shapiro). Said written agreement

specified compensation at the rate of $250.00 an hour, and also stated ". . . I assign to you to secure payment for your services, a lien on any real property in which I have an interest, by way of inheritance or otherwise, including real property (including two lots in the name of Susan Cabot Roman also known as Harriet Pearl Shapiro) located at 4601 Charmion Lane, Encino, California 91316 . . . " The legal description of the said two lots is at A-3. Said written attorney lien agreement was

* * *

forth in **A through G above,** and to an equitable lien as sought herein in that only at the date of entry of the decree of distribution are the rights of Tim Roman determined and the estate Co-Administrators (Defendants herein) as of that date should not distribute the portion claimed as due these Plaintiffs (in the causes of action herein) and to anyone but the Plaintiffs, and defendants should be enjoined from any such distribution as alleged in the Fifth Cause of Action.

**FOURTH CAUSE OF ACTION**
**(For Recovery of Monies Due and Enforcement of Equitable Lien Or Constructive Trust Thereon)**
***Haupt v. Charlie's Kosher Market,* 1941) 17 C.2d 843.**

**PLAINTIFFS VS. DEFENDANTS TIMOTHY SCOTT ROMAN AND MATTHEW SPAULDING AND LEO ALTSHULER AND DOES 1 TO 50.**

31. Plaintiffs incorporate by reference paragraphs 1 through 11 at pages 1 through 3, and also the First and Second Causes hereof. The co-administrators and Does 1 to 11 are sued in this cause only because it is alleged any

lien claim by each such party is subordinate to the lien claim of the plaintiffs and the co-administrators should be enjoined from paying contrary to said lien claim as set forth in the Fifth Cause.

32. CHESTER LEO SMITH was born in 1922, is now age 70, and his State Bar Number is 22102. His father (also Chester Leo Smith) was a defense attorney in Kansas City, Missouri. Chester Leo Smith has a B.A. (1942) from the University of Chicago, served in World War II, took his law degree from Harvard Law in 1948, was admitted to the Illinois Bar in 1949 (was a member until about 1955 and can

* * *

**FIFTH CAUSE OF ACTION**
**(To Enjoin Permanently and Pendente Lite Payment To Defendant TIMOTHY SCOTT ROMAN Of Monies Due To Plaintiffs)**
***Haupt v. Charlie's Kosher Market*, 1941 17 C.2d 843.**

**PLAINTIFFS VS. DEFENDANTS TIMOTHY SCOTT ROMAN AND MATTHEW SPAULDING AND LEO ALTSHULER AND DOES 1 TO 50.**

36. Plaintiffs incorporate by reference paragraphs 1 through 11 at pages 1 through 3, and also the First and Second Causes and Third and Fourth Causes hereof. The co-administrators and Does 1 to 11 are sued in this cause only because it is alleged any lien claim by each such party is subordinate to the lien claim of the plaintiffs and the co-administrators should be enjoined from paying contrary to said lien claim as set forth in the Fifth Cause.

37. This is a cause for a Temporary Restraining Order, Preliminary and Permanent Injunctions, and Damages if relevant. (CC §§ 3333, 3422) (CCP §§ 526, 527). **The grounds alleged include all grounds in CCP § 526:**

1. When it appears by the Complaint that the Plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

2. When it appears by the Complaint or Affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the Action;

3. When it appears, during the litigation, that a party to the Action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the Action respecting the subject of the Action, and tending to render the Judgment ineffectual;

4. When pecuniary compensation would not afford adequate relief;

5. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

6. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; and

7. Where the obligation arises from a trust.

38. Defendants Anthony Spaulding, Matthew Spaulding and Leo Altschuler are Co-Administrators of

the Estate of Harriet Pearl Shapiro in Probate No. P 712 879.

39. Said Defendants identified above and each of them, wrongfully if not restrained, will distribute to Defendant Timothy Scott Roman monies that should be paid to Plaintiffs pursuant to their equitable lien.

**40. Plaintiffs request that defendants stop their threatened conduct.**

**41. Defendants have refused to agree there is a lawful lien. There is a resulting necessity for prompt judicial action to protect Plaintiffs' lien claim in that the obligations of Defendants, and Tim Roman, arise from a lien and equitable lien and constructive trust as well as express trust established by the Lien Agreement.**

42. Defendant's threatened wrongful conduct, unless and until enjoined and restrained by Order of this Court, will cause great and irreparable injury to Plaintiffs in that the monies **rightfully belonging to Plaintiffs will be distributed to a person not entitled thereto, to wit, Timothy Scott Roman, or his assignees, and then Plaintiffs will not be able to locate such monies rightfully belonging to them, and any judgment they get in this Action will be nullified and not collectible.**

43. Plaintiffs have no adequate remedy at law for the injuries or which are threatened. It will be impossible for Plaintiffs to collect the lien monies properly payable to them so any award of damages would not afford adequate relief if Defendants' conduct is not restrained. In the alternative Plaintiffs will be forced to institute a multiplicity of suits since any monies paid Tim Roman

will be transferred elsewhere, to other persons, and reasonably possibly out of this State. Further, Plaintiffs may have to assert their priority of claims against alternate heirs or assignees or transferees of claimants in the estate, causing a multiplicity of suits (See: Sixth Cause).

**44.** As a proximate result of Defendants' threatened wrongful conduct, Plaintiffs will be damaged in the sums due them as alleged in all causes of action, but not less than $230,000.00, or in a higher sum possibly if the court elects to determine a reasonable value of services rendered. Plaintiffs will be further damaged in like manner so long as Defendants' conduct continues. The full amount of such damage is not now known to Plaintiffs, and Plaintiffs will amend this Second Amended Complaint to state such amount when the same becomes known, or on proof thereof.

* * *

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA | : | IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY |
| v. | : | |
| TIMOTHY SCOTT ROMAN | : | CASE NO. MP 7362 |
| | : | (Superior Court of the State of California, County of Los Angeles Case No. A 815 402) |

---

MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION TO DENY REQUEST FOR AN ORDER COMPELLING ATTENDANCE OF OUT-OF-STATE WITNESSES

Petitioners Carlton Gadjusek, M.D.; Philip Gorden, M.D.; Pierre Renault, M.D.; Ernest Johnson, M.D.; Judith Fradkin, M.D.; Paul Brown, M.D. C.J. Gibbs, Jr., M.D.; James Mills, M.D.; and Gilman Grave, M.D.; by their attorneys, Breckinridge L. Willcox, United States Attorney for the District of Maryland and Geoffrey R. Garinther, Assistant United States Attorney for said District, respectfully request that this Honorable Court deny the request for an order directing them to appear in Los Angeles, California, on January 23, 1989, to testify at the criminal trial of the defendant, Roman . . .

Introduction

Defendant seeks to compel attendance of these physicians as witnesses in the California proceeding . . .

As to Roman, petitioners hold the opinion, based on their knowledge of the disease, that he did not have CJD in 1986 when he murdered his mother because by now, two years later, according to the customary progression of the disease, he should be dead. Petitioners maintain, therefore, that their testimony is not only immaterial and unnecessary to defendant's defense, but in fact would be adverse to it. . . .

Wherefore . . . , petitioners respectfully request that this Court deny defendant's request . . .

Respectfully submitted,

Breckinridge L. Willcox
United States Attorney
By: /s/ Geoffrey R. Garinther
Geoffrey R. Garinther
Assistant U.S. Attorney

BERT Z. TIGERMAN, STATE BAR NO. 27867
VICKI L. CRESAP, STATE BAR NO. 144377
TURNER GERSTENFELD WILK TIGERMAN & YOUNG
8383 Wilshire Boulevard
Suite 510
Beverly Hills, California 90211-2498
(213) 653-3900

Attorneys for Heir, TIMOTHY ROMAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

| | |
|---|---|
| Estate of<br><br>HARRIET PEARL SHAPIRO, aka SUSAN CABOT ROMAN,<br><br>Deceased. | **Case No. P 712879**<br><br>TIMOTHY ROMAN'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF BERT Z. TIGERMAN IN SUPPORT OF MOTION<br><br>DATE: 3-21-94<br>TIME: 11:00 A.M.<br>DEPT: 11<br><br>(Filed Jan. 19, 1994) |

## TABLE OF CONTENTS


| | Page(s) |
|---|---|
| MOTION FOR SUMMARY ADJUDICATION OF ISSUES | 1 |
| DECLARATION OF BERT Z. TIGERMAN IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF ISSUES | 4 |
| MEMORANDUM OF POINTS AND AUTHORITIES | 7 |
| I. INTRODUCTION | 7 |
| A. Procedural Background | 7 |
| B. Factual Background | 8 |
| II. Discussion | 12 |
| A. SMITH IS SOLELY A MORTGAGEE WITH RESPECT TO THE FEE AGREEMENT AND, AS SUCH, HE IS NOT ENTITLED TO PROBATE DISTRIBUTION; HIS PROPER LEGAL RECOURSE IS AN ACTION AGAINST ROMAN ON AN UNSECURED DEBT | 13 |
| 1. Smith is not entitled to probate distribution because his status as mortgagee, with no right to title or possession of the specific real property described as security for his fees, provides no basis therefor | 13 |
| 2. Smith is not entitled to probate distribution because, as mortgagee from an heir, he took his security interest subject to probate administration, and the sale of the security during the course of probate administration extinguished his rights in the property, such that the sole remedy remaining to him is an action against Roman on an unsecured debt | 14 |

B. THE FEE AGREEMENT ENTERED INTO BETWEEN TIMOTHY ROMAN AND CHESTER SMITH ON DECEMBER 12, 1986 IS VOID IN VIOLATION OF PUBLIC POLICY IN THAT IT VIOLATES FORMER RULES 5-101 AND 2-107 OF THE RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA, WHICH WERE IN EFFECT AT THE TIME THE AGREEMENT WAS ENTERED INTO ..... 17

1. The Fee Agreement gave the Smiths an adverse financial relationship to Roman in that it gave them a financial interest in the outcome of Roman's criminal prosecution and, in violation of former Rule 5-101, the Smiths failed to advise Roman to consult with another attorney with respect to the terms of the Fee Agreement and failed to allow Roman time to consult with another attorney with respect to the terms of the Fee Agreement ..... 18

2. The Fee Agreement gave the Smiths an adverse financial relationship to Roman in that it created a security interest that allowed the Smiths to summarily realize disputed fees and, in violation of former Rule 5-101, the Smiths failed to advise Roman to consult with another attorney with respect to the terms of the Fee Agreement, and failed to allow Roman time to consult with another attorney with respect to the terms of the Fee Agreement..... 24

3. The Fee Agreement is unconscionable under former Rule 2-107 for lack of informed consent in that, at the time it was signed, Roman lacked the capacity to understand and consent to the Fee Agreement..... 25

III. CONCLUSION..... 27

* * *

to me by Chester Smith and/or marked for identification during his deposition testimony.

6. Attached hereto as Exhibit "Y" is a true and correct copy of portions of the Second Amended Complaint filed on or about July 13, 1992 by Chester Smith in LASC case no. SC 005 430 and which is the subject of a Request for Judicial Notice filed herewith.

7. Attached hereto as Exhibits "EE" and "FF" are true and correct copies of excerpts of the Declaration of Dr. Arthur Kowell, which declaration is attached in its entirety as an exhibit to Chester Smith's Response to/Objections to/Cross Petition to/Petition to Inquire Into Circumstances Surrounding and Consideration for Transfers of Interest filed herein on or about December 3, 1993.

8. Attached hereto as Exhibit "LL" is a true and correct copy of an excerpt from the transcript of proceedings in LASC case no. A 815 402, taken on May 1, 1989 and May 2, 1989, the original of which shall be lodged with the Court prior to the date set for hearing in this matter.

9. Attached hereto as Exhibit "OO" is a true and correct copy of the Smiths' Notice of Assignment filed herein on September 18, 1990.

10. Attached hereto as Exhibit "PP" is a true and correct copy of the Petition to Inquire Into Circumstances Surrounding and Consideration for Transfers of Interest filed herein on June 18, 1992.

11. Attached hereto as Exhibit "II" is a true and correct copy portions of the First Account Current, etc., filed by the Co-Administrators herein on December 24, 1992.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of January, 1994 at Beverly Hills, California.

/s/ Bert Z. Tigerman
Bert Z. Tigerman

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

### A. Procedural Background

On June 18, 1992, the Co-Administrators of the Estate of Harriet Pearl Shapiro (respectively, the "Co-Administrators" and the "Estate") filed their Petition to Inquire Into the Circumstances Surrounding and Consideration for Transfers of Interest pursuant to Probate Code §11604 (the "Petition"). [Exh. "PP"] Paragraph 5 of the Petition requests a judicial determination of the validity of an Agreement for Services (the "Fee Agreement") [Exh. "E"] executed by Chester Smith ("Smith") and Timothy Roman ("Roman"), the sole heir in these proceedings. The Fee

Agreement was filed herein on September 18, 1990 by Chester Smith and Ann Smith (the "Smiths") as an exhibit to their Notice of Assignment by Timothy Roman (to Chester Leo Smith and Ann L. Smith) of Lien Interest in Real Property Inherited by Mr. Timothy Roman (the "Notice of Assignment") [Exh. "OO"]. In their Notice of Assignment, the Smiths allege that they have a lien on real property in the Estate in the minimum sum of $230,000 for services rendered defending Roman in a criminal matter.

Roman contends as a matter of law that, under the Fee Agreement, the Smiths stand in the position of mortgagees and, as such, are not entitled to probate distribution. Further, should the Court determine that the Smiths have any interest whatsoever in these probate proceedings pursuant to the Fee Agreement, Roman contends that such interest is not enforceable in that the Fee Agreement is void as against public policy for violation of the Rules of Professional Conduct of the State Bar of California.

CHESTER LEO SMITH
12121 Wilshire Boulevard, Suite 1103
Los Angeles, CA 90025
213 476 6486

Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

| | |
|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Plaintiff,<br><br>VS.<br><br>TIMOTHY SCOTT ROMAN,<br><br>Defendant. | NO. A815402<br><br>DECLARATION OF DR. ARTHUR KOWELL<br><br>(Filed Jun. 2, 1989) |

I declare under penalty of perjury as follows:

I am a physician duly licensed by the State of California since 1975. I am board certified in neurology. I attach a professional resume. I presently practice with the Encino Neurological Medical Group. Each and all of my statements herein (and each and all of my medical diagnoses) is made to a reasonable medical certainty.

Mr. Roman was born in 1964. He was arrested December 11, 1986 for an alleged act of violence on December 10, 1096. I first examined him after his arrest.

I was requested to examine Timothy Roman in my professional capacities and to answer this primary question:

Is Mr. Roman suffering from any physical disease or diseases or other disease?

If called as a witness to answer that question, I could and would testify to the following medical diagnoses and to the below stated bases upon which I support such diagnosis.

Mr. Roman has life-long (idiopathic) panhypopituitarism – a physical disease of the endocrine system involving the thyroid, adrenal, and gonadal axes. My diagnosis is easily confirmed since one of his treating physicians at UCLA since 1970 (Doctor Solomon Kaplan) used two side-by-side photographs of Mr. Roman (one at age 6 and one at about age 10) to illustrate in a medical textbook this very rare endocrine disorder of which he is a victim (e.g., one in 60,000 births). The test was *Endocrine and Genetic Diseases of Childhood and Adolescense* [sic] (published in 1975 by W. B. Sanders Co.) A copy of the text page with this photograph is attached.

Continuously, from essentially the date of birth and to the date of my examination, and certainly on December 10, 1986, Mr. Roman had such disease of the endocrine system (panhypopituitarism).

For many years preceding December 10, 1986, and certainly on December 10, 1986, and continuing through the date of my examination, the malfunctions of his endocrine system have required life-sustaining synthetic hormonal supplements. There is no present medical reason to believe he can ever be cured.

Mr. Roman requires hydrocortisone and synthroid as life-necessary supplements. The taking of these medications is not a medically voluntary act on his part. Without both of these supplements, he would, within a limited period of time of several or some years, to a reasonable certainty, become so ill he would undoubtedly die of one or more causes a consequence of an endocrine system so deficient. By way of example, the records of the Sheriff show that for a period of some months in 1987 (prior to August 13, 1987), Mr. Roman refused any hormonal supplements. I examined him on August 13, 1987. His plasma cortisol was less than 2. I sent the attached letter of September 24, 1987 to his attorney, certified, return receipt. I am informed Mr. Roman then resumed hydrocortisone and synthroid (but not testosterone) but will not take them together on the same day.

He has not yet reached puberty, as shown also by his Tanner State IV – V pubic hair, Tanner Stage II axillary hair and sparse facial hair.

Each of these hormonal supplements is characterized in the literature as capable of causing severe side effects, including psychosis. The phrase "literature" includes standard works as *Remington's Pharmaceutical Sciences, The Pharmocologic Principles of Medical Practice, USP Dispensing Information, The United States Dispensory* and *Facts and Comparisons.* Also: *The Physicians Desk Reference,* a widely distributed reference work that would normally be available in all hospitals and is often used by medical and other persons in professions that bring them into frequent contact with persons taking lawfully-prescribed medications.

On what basis or bases do I support that diagnosis/ those diagnoses (and my other medical statements)?

I examined Timothy Scott Roman on August 13, 1987, on February 12, 1987 and October 2, 1987. BEAM studies were performed. This test is described in the attached material.

The BEAM results as to Mr. Roman are stated in the attached reports of February 12, 1987 and October 2, 1987.

The opinion, in summary, is that both BEAM studies revealed multiple areas of brain dysfunction.

I reviewed a duplicate of a court exhibit of UCLA records. It is marked by page number and has pages 1 to 622. I retain these records.

His physicians at UCLA are Dr. Solomon Kaplan and Dr. Barbara Lippe. They are both with the Department of Pediatrics at UCLA. They specialize in pediatric endocrinology and are prominent specialists.

The UCLA medical records also show Mr. Roman from 1970 to 1985 was on the National Pituitary Agency program (funded by the National Institute for Health) for distribution of cadaver-derived natural growth hormone (primarily to the most severely ill growth hormone deficient children.) (See attached letter of Dr. Kaplan of February 26, 1970 to the National Pituitary Agency, to so treat Mr. Roman for experimental purposes.) (See attached Outpatient Note of Dr. Lippe of June 26, 1985, when this NIH program was halted because of the Creutzfeldt-Jacob problem.)

The June 26, 1985 note of Dr. Lippe (at page 124 of the UCLA reports) states she warned Mr. Roman's

mother she must look for possible "neurological s/s" in Mr. Roman because of the problems with pituitary growth hormone.

I reviewed also the records of the examination of Mr. Roman made at the USC Endocrinology Department in 1987 while he was a prisoner at the County Jail and in custody of the sheriff.

I also examined the report of Dr. Lee Lindquist as to his examination of Mr. Roman on October 18, 1987.

I have examined the 1986 Encino Plaza Pharmacy records for Mr. Roman.

I received a copy of the letter of Dr. Lippe to the Medical Clinic (R. N. Baker) of January 16, 1987, giving Sheriff Nurse Baker his last prescribed medications and specifically noting cortisone "needs to be increased if he is under medical or surgical stress."

I specifically refer to the medical records of Dr. Lippe's examination of Mr. Roman on November 6, 1986 (attached). I observe that Dr. Lippe states that at the time of her prior examination of Mr. Roman in February, 1986, his dosage of synthroid was increased to a daily dosage of synthroid of .3 mg. – which .3 mg he was taking through November 6, 1986. (Encino Plaza Pharmacy records show this – copy attached.) Mr. Roman was also taking from February 6, 1986 through November 6, 1986, the indicated (by Dr. Lippe) dosages of testosterone and hydrocortisone.

I reviewed the notes of Dr. Lippe as to the lab results of her tests as of November 6, 1986. The thyroid level is very high. (Free T4 Index 20.4, T4 15.6.) This is at or near

a level which could cause psychosis, particularly in response to stress. The records show Dr. Lippe (when the lab results came back on or about November 12, 1986) then **decreased the synthroid dosage on November 12, 1986 to .2 mg. daily** (her notes show this at page 2 of her November 6, 1986 report). It is not known if the mother followed these instructions, but the prescription was called to the Encino Plaza Pharmacy by a UCLA physician and filled on November 12, 1986 (attached) by the Pharmacy.

If the elevated thyroid level continued through December 10, 1986, at the level shown by the lab tests of November 6, 1986, (or its effects continued substantially through December 10, 1986) Mr. Roman could on said date been in danger of a severe psychotic disturbance, loss of memory, and confusion. Psychotic episodes could follow as a reasonable medical consequence with such thyroid levels.

I also reviewed National Institute of Health literature as to a study made by NIH as a result of the Creutzfeldt-Jakob problem which caused the cessation of the use of natural growth hormone in 1985. This included the NIH fact sheet of May, 1986, attached hereto.[1] As indicated, I have found no clinical signs of actual CJD. The literature shows that there is no test to detect pre-clinical CJD. See

---

[1] "The following symptoms are among those that may be seen in CJD. Changes in . . . behavior and mental capacity . . . erratic or aggressive behavior, progressive memory loss and confusion . . . While the methods of preparation of hGH used since 1977 yield a product that is more than 95 percent pure. . . . "

attached article re Pre-Clinical CJD in *Neurology* (July 1988).

A particular problem that still has to be addressed is that the NIH natural growth hormone provided the children was approximately 95% pure and 5% impure, as shown by the May 1986 NIH Fact Sheet. This means the purification process was unable to eradicate all cadaver tissue associated with the pituitary glands being processed to derive the molecules of natural growth hormone. This hormone was administered by injection. Growth hormone is itself a protein and targeted to receptors in the brain. I note this is also stated in the deposition of NIH specialist Doctor Paul Brown (Laboratory of Central Nervous System Studies) (attached page).

The natural growth hormone would have been consumed in the normal cell process but the impurities could have been in some part retained in the cell structure of the brain, possibly resulting in abnormal function of nerve cells. The importance of this is also shown in the deposition of Dr. Joseph Gibbs (also of the NIH Laboratory of Central Nervous System Studies, page attached) – wherein he notes a fact of neurology, to wit, that a physical malfunction (for whatever reason) in one part of the brain can travel to far more distance areas of the brain, with consequent symptoms.

The records show Mr. Roman was on the program from mid-1970 to 1985. The program was started in 1963. Mr. Roman was on this program for 15 of its 23 years. During that time, impurities in relatively substantial amounts could have been present in the cells of his brain. This could be an explanation for the similarities of the

learning difficulties and emotional problems of Mr. Roman and those of the 16-year-old girl referred to in the article in *Neurology* (July 1988).

Dr. Lippe and Dr. Kaplan are leading experts and as the physicians for Mr. Roman for over 15 years, would be the primary persons to ask the following very relevant question (assuming Mr. Roman had started on November 12, 1986 on the decreased dosage of .2 mg), to wit:

How long could the possible psychotic state as of November 6, 1986 have lasted – if Mr. Roman in fact started on the decreased dosage as of November 12, 1986. Obviously it is not possible to know if the mother was using the old .3 mg. dosage bottle until it was exhausted.

In this connection I am advised the police records show the police took the medication bottles of Mr. Roman from the residence on the morning of December 11, 1986. This indicates Mr. Roman told them he had medication. The labels on the bottles would show the dosages. Did the police keep records as to the dosages shown on the bottles? The thyroid levels of Mr. Roman on December 10, 1986, are critical.

The 1985 note of Dr. Lippe at page 124 of the UCLA reports states she warned Mr. Roman's mother she must look for "neurological symptoms" in Mr. Roman because of the CJD problem with pituitary growth hormone. Assuming he does not have CJD (there are no clinical symptoms), still any act of violence performed by Mr. Roman could be a neurological symptom a proximate physical result of his hypopituitarism (including possible residual neurologic dysfunction from documented seizure episodes) with the grave medical difficulties of a

life-long balancing act of replacing a deficient endocrine system with hormonal supplements, each of which is capable of causing psychosis.

So declared under penalty of perjury under the laws of the State of California.

Executed this 16th day of May, 1989 at NEWHALL, California.

/s/ Arthur Kowell
ARTHUR KOWELL, M.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CASE NO. P 712879

RESPONSE OF CHESTER LEO SMITH
AND ANN L. SMITH TO TIMOTHY ROMAN'S
SEPARATE STATEMENT OF UNDISPUTED FACTS
[Filed 3/7/94]

The Smiths herewith respond to the Separate Statement of Undisputed Facts of Timothy Ryan.

* * *

[Assertion] The $230,000 in attorney's fees claimed by the Smiths in their Notice of Assignment are attributable to services rendered on behalf of Roman in his criminal prosecution.

[Response] Denied as stated. Incomplete and this is not correct. Not the best evidence. It is not correct that the only subject covered or to be covered or that was covered during several turbulent years (e.g. of dealing with this unpredictable family and the complications of Mr. Roman) was the "defense" of Mr. Roman to formally filed court charges. It was always observable including on the day the agreement was signed there was no way of knowing every type of service that might be required. See Declaration of Chester L. Smith. Declaration of Dr. Kowell Ex. E. Also: The First cause of the West District Action at issue is on the contract, the Second Cause is on the common counts, the third cause is for Declaratory

* * *

[Response] Deny that Mr. Roman lacked the legal capacity to enter into the fee agreement under the circumstances of the actual facts and the requirements of the State Bar that an attorney enter a fee agreement at the beginning of the attorney/client relationship. Aver all fee agreements are subject to review, as this is, by a judicial officer in all events who can consider all the circumstances under which persons under arrest for serious crimes can retain attorneys who are required by the State Bar to have written attorney agreements.

[Response] Allege in all events that, as shown by court minute orders, Mr. Roman waived any conflicts of interest on the advice of an independent court appointed attorney, Richard Lasting, of the firm of White and Lasting, on or about May 1 and May 2, 1989.

[Response] Allege in all events the Smiths brought in separate counsel, James Barnes, former Public Defender, for review of the defense preparation.

[Response] Allege in all events that Mr. Roman did not object in a timely manner to notice of lien assignment. Mr. Roman instead signed a number of assignments to defeat the purposes of the fee assignment as shown by the Petition of the Co-Administrators now at issue in this Court. The issue of estoppel can also be equitably considered by this Court.

[Alleged Undisputed Fact] 1. Roman's mother died on December 10, 1986.

[Response] True.

[Alleged Undisputed Fact] 2. On the night of December 10, 1986, Roman was arrested and charged

with first-degree murder in connection with the death of his mother.

[Response] Not true. The arrest was the early morning of December 11, 1986, at the conclusion of the interrogation.

[Alleged Undisputed Fact] 3. On December 11, 1986, the day after his arrest, Roman called Smith, a longtime family acquaintance, [from County jail]

[Response] Objection: Not clear until words are defined. I had met Timothy Roman probably in the [early 70's. See Vol. 1. Dep. 5.] not surprised that Tim Roman called me, expecting only some minor young adult problem. I was shocked by the information given me by him on 12/11/86. The critical person I knew and more than as an "acquaintance" was Dr. Carl Faber, the psychologist for the mother. I trusted him to give me accurate information. He did so to the best he could, preserving confidentiality, He knew a good deal about the medical and family background of Mr. Roman. The family background was critical. The "heirs" who would take if Mr. Roman could not inherit had to be contacted so a consolidated family support could be put in place. Dr. Faber was to be a critical witness at trial in 1989. He trusted us to do our best to figure out how to get Tim Roman out of a disastrous possible long term State prison term. The medical evidence we compiled over the next several years to defend Mr. Roman (now used by him to void the agreement to pay us for such vital services) shows how dedicated we were to keeping him alive, to keeping him medically attended to, and to constructing an excellent defense even if it meant we would not be paid.

* * *

[Alleged Undisputed Fact] 4. On the afternoon of December 11, 1986, when Smith first met with Roman in County Jail, Roman was tired, unhappy, in distress, and unable to comprehend his surroundings.

[Response] Admit he was "tired, unhappy, in distress". . . . There is an Exhibit tape of his interrogation by the police on 12/11/86 in the Exhibit Room. *People v. Roman,* A815402. This also shows his capacity that morning.

[Alleged Undisputed Fact] 5. On the afternoon of December 11, 1986, when Smith first met with Roman in County Jail, Roman was upset and scared.

[Response] Admit he seemed upset, admit he seemed scared.

[Alleged Undisputed Fact] 6. On December 12, 1986, Smith visited Roman in County Jail, bringing with him 7 to 9 documents for Roman to sign.

[Response] Admit we had a number of documents for Mr. Roman to sign on our next visit the next day.

[Alleged Undisputed Fact] 7. When Smith met with Roman in jail on December 12, 1986, Roman was miserable and apprehensive.

[Response] Admit he was miserable and apprehensive.

[Alleged Undisputed Fact] 8. The documents that Smith brought for Roman to sign on December 12, 1986 included authorizations for the District Attorney, the local police, UCLA Medical Center, authorizations to enter Roman's home, and the Fee Agreement.

[Response] Admit these are essentially the basic documents. The District Attorney had to be talked to immediately to try to avoid special allegations for death penalty charge. The UCLA Medical records had to be rushed for obvious reasons. Entry to secure the crime scene was essential. The body had to be preserved to permit a reautopsy. This is only illustrative. See Declaration of Chester Smith.

[Alleged Undisputed Fact] 9. All 7 to 9 documents were handed to Roman for signature at one time.

[Response] Objection: Ambiguous. The question should be directed to the jail procedures for an attorney to have a client in custody sign a document. . . . All documents were delivered to a jail deputy to deliver to Mr. Roman.

* * *

[Alleged Undisputed Fact] 11. The subject matter of the Fee Agreement is Roman's representation by the Smiths in connection with the Roman's murder prosecution.

[Response] Objection. Not correct as stated, to wit, that it was to be the only mode of representation. Mr. Roman required an all compass attorney of over 35 years experience if anyone ever did.

[Alleged Undisputed Fact] 12. On December 12, 1986, Roman read the Fee Agreement out loud at Smith's request, and then just signed.

[Response] Objection. Ambiguous summary. Any finding should be the exact wording of the deposition. See Declaration of Chester Smith. See entire deposition volume/or context.

[Alleged Undisputed Fact] 13. Prior to signing the Fee Agreement, Roman did not ask Smith any questions about that agreement.

[Response] Objection. Ambiguous summary. Any finding should be the exact wording of the deposition. See Declaration of Chester Smith. See entire deposition volume/or context.

[Alleged Undisputed Fact] 14. Roman was born with panhypopituitary disease.

[Response] True. See attached Declaration of Dr. Arthur Kowell.

[Alleged Undisputed Fact] 15. As of November 6, 1986, Roman's thyroid medication was at a level that could cause psychosis.

[Response] Objection. Ambiguous. Any finding should be the exact wording of the Dr. Kowell Declaration. This is a very complicated medical point. See Declarations of Chester Smith and Dr. Kowell. The declaration of Dr. Kowell was revised a number of times so it would be exactly medically accurate. The Menendez brothers could have been found not guilty if they had Mr. Roman's medical history instead of the pseudo scientific gibberish that came into evidence in Menendez.

[Alleged Undisputed Fact] 16. On December 10, 1986, two days before he signed the fee Agreement, Roman may have been under the influence of an excess of synthroid medication, which could have caused hallucination.

[Response] Objection. Ambiguous. Any finding should be the exact wording of the Dr. Kowell declaration. This is a very complicated medical point. See Declarations of Chester Smith and Dr. Kowell.

[Alleged Undisputed Fact] 17. As of December 10, 1986, two days before he signed the Fee Agreement, Roman could have been in danger of severe psychotic disturbance, including loss of memory and confusion.

[Response] Objection. Ambiguous. Any finding should be the exact wording of the Dr. Kowell declaration. This is a very complicated medical point. See Declarations of Chester Smith and Dr. Kowell. Comment: The two Superior Court Judges who had this case the longest believed the NIH experiment data was too speculative. They and District Attorney relied on the attached Department of Justice position (representing to a Maryland court asked to compel depositions by NIH researchers) that he could not have a deadly slow virus disease that destroys the neurons of the brain because "by now, two years later, according to the customary progression of the disease, he should be dead." This position was totally false. In fact the NIH situation was much worse for Mr. Roman than any of the Judges ever would concede. In 1993, this news item appeared (attached); "Recipients of the human growth hormones are also excluded because it is derived from pooled human donors and thus is considered an additional exposure factor for HIV, as well as for other undetected viral diseases, including Creutzfeldt-Jakob disease." The Los Angeles Times. 10/25/93 (attached).

That includes Mr. Roman, on NIH supplied natural growth hormone from 1971 to 1985.

(Note: In fact, Judge McKenna told the Department of Justice to give me two experts to depose, as a favor, since they were in his Court so often asking for matters to be done they were often not entitled to.). The depositions of Dr. Paul Brown and Dr. Joseph Gibbs are in the Index of Exhibits.

Thus, Mr. Roman is one of that tiny group of 10,000 experimentees now known to be the subject, possibly, of not only all known slow viruses (often undetectable by any known test) but whatever unknown viruses are brewing in the 10,000 children. That statement that if Mr. Roman was not dead within a year he could not have any virus is now totally abandoned. In fact the two doctors whose depositions I took, Paul Brown and Joseph Gibbs, two leading researchers, made it clear to the General Counsel of the NIH in my presence that this statement was contrary to their research (cited by Dr. Kowell and researched by myself at UCLA Medical School for the depositions). But Dr. Gibbs' deposition testimony raised the issue re the effect on the brain of the 5% average remaining cadaver tissue in the hgh taken by Mr. Roman for 15 years. I brought this up to Dr. Kowell then, resulting in his analysis at page 7 to 8 of his declaration. Again, such as the Menendez brothers only wish they could legitimately argue the neurons of their brain reasonably could misfire under stress because of contamination by the tissue of thousands of cadavers.

[Alleged Undisputed Fact] 18. Later, during the criminal proceedings, Smith represented to the court that he had never considered Roman to be emotionally an adult.

[Response] Objection. Not the best evidence. This is a reference to a court pleading. The entire court pleading should be inserted as to this finding. That includes any statement as to counsel's representation to the court of the emotional level of Mr. Roman. This representation was made because, as Dr. Kowell states, Mr. Roman had never reached puberty.

See also: Conservatorship Proceedings as to Timothy Roman Probate Number P 740595, filed in and about 1990, after the successful termination of the criminal proceedings by his Aunt Mildred Kahan. Mr. Bert Tigerman represented Mr. Roman. Mr. Roman was found not to be in need of a conservator, but this is subject to the actual file. The file is indexed in the Index of Exhibits. . . . S D L.

[Alleged Undisputed Fact] 19. Also during the criminal proceedings, in his Motion to View Scene, Smith stated that Roman's fragile, suggestive and vulnerable emotional structure resulted in his being in a state of confusion.

[Response] Objection. Not the best evidence. The court pleading should be inserted in entirety as to any finding because of the necessity of having the proper context, and the circumstances of utterance.

* * *

[Alleged Undisputed Fact] 20. Also during the criminal proceedings, in his Motion to Strike, Smith represented to the court that, on December 10, 1986, when Roman was charged with murder, he had a mental age of under 14 years.

[Response] Objection. Not the best evidence. The court pleading should be inserted as to this finding

because of the necessity of having the proper context, and the circumstances of utterance. See declaration of Chester Smith. See the exhibit to the relevant deposition.

[Alleged Undisputed Fact] 21. Prior to Roman signing the Fee Agreement, Smith did not advise him to consult with another attorney.

[Response] True except he was to consult with Ann Smith, and any attorney, as Mr. James Barnes, that we associated. See: Declaration of Chester Smith.

Addition to Response to No. 8. It was necessary to see his grandmother, Muriel Shapiro, immediately. This was a family that could be really mean, to each other (per Dr. Faber). The appearance of family unity had to be maintained if at all possible. Why?

"But (female juror) Delahjunt had her own reasons for wanting lenience. The single mother said she was moved by the apparent support the defendants received from their grandmother, the mother of the man they killed, as well as by the emotional testimony of Lyle Menendez." The Los Angeles Times. 2/14/94.

The probate record shows that the grandmother, in 1990, after Mr. Roman was out of jail and making his occasional typical haphazard (never-knew-when it would pop out) chilling remarks about what had happened, filed a Petition to disinherit him. She filed an affidavit of Psychologist (Dr. Feldman) who said Mr. Roman had talked about "bash her to her death". See: Second Amended Complaint. List of Exhibits: E-1 to E-7, at p. E-7. That did not happen on our station. On our station she so loved him she assigned to him in writing the undivided one half

interest in the estate she would inherit if he could not inherit. See MSC Brief of Plaintiffs. West District Action.

[Alleged Undisputed Fact] 22. Prior to Roman signing the Fee Agreement, Smith did not allow him time to consult with another attorney.

[Response] . . . See answer to 21. I did not advise him to consult with another attorney. I did not then allow any time for him to consult with another attorney. See 8 and 21.

[Alleged Undisputed Fact] 23. At the time the Fee Agreement was signed, Smith did not advise Roman of any conflict of interest . . .

[Response] It is true . . . Time was critical.

Alleged undisputed Fact NO. 28 is "At the time that Roman signed the Fee Agreement, Smith knew that there was no other family member who was willing to be financially responsible."

[Alleged . . . ] 31. Smith would have advised Roman to plead if he knew that, as a result of whatever plea the District Attorney required, Roman could inherit.

[Response] This is simply not true. The depositions do not say such and much time was spent on all of the futile attempts of the Smiths and subsequent counsel to reach an agreement that would keep Roman out of prison. But Tim Roman would say this and it was just part of what counsel took on. Chester Smith already knew when the agreement was signed this "fragile ecosystem", so tragically endowed, so interested in his inheritance always, so unable to control his projective angers that were so understandable a reaction to his defects, needed a very experienced attorney, to try to conceal this

appearance and get him in shape to testify. See: the 1990 Petition to Disinherit by his grandmother. The conservatorship proceeding by Mildred Kahan who paid Lasting & White – where Mr. Roman called her overbearing. Mr. Roman should have/would have normally died at birth. His endocrine system was constructed of artificial chemicals. He was such a mess he qualified for the greatest NIH disaster ever. He did not deserve State Prison.

It was recognized on December 11, 1986, that Mr. Roman was held on a first degree murder charge, which meant no bail, and that the major problem that had to be addressed was how to keep him out of the State Prison where this indeed "fragile ecosystem" could so easily die and almost certainly would. But the District Attorney had a modestly major case here, and always insisted on a sentence by way of plea bargain so Mr. Roman could end up for years in the State Prison. That problem also faced successor counsel, and it was really a relief to know successor counsel had to try the case because (as well) they could not plea bargain to save him for certain from the State Prison. (When Mr. Roman finally testified, in 1989, I am informed he did not remember any blows.) (But in 1990 he used the word "bash" to the psychologist.) Regrettably, this statement about us does indicate the anger Mr. Roman has, not only because of our insistence on disclosing his medical history but because of our wanting to be paid, and thus frustrating his inheritance. The fact the statement is untrue is completely shown by the endless documentation in which we addressed, to doctors, and to the court, the medical problems of Mr. Roman.

* * *

[Alleged Undisputed Fact] 38. Smith expected to be paid attorney's fees directly from the Estate immediately upon notification to the Co-Administrators of his lien.

[Response] This is untrue. No sane attorney would expect any such thing to happen. The Notice of Lien was filed in the estate under the then case law cited in the briefing to the Court of Appeal which said such a notice could be filed but did not have to be, and that the lien rights had to be asserted in an independent action. This was done in the West District Action. See the Opening Brief to the Court of Appeals. See the Declaration of Chester L. Smith.

* * *

[Alleged Undisputed Fact] 45. The Smiths intend to call at least 27 witnesses and introduce approximately 8,000 exhibits with respect to the issue of their attorney's fees at the hearing on the Petition.

[Response] Denied as stated ("intend to call"). We "listed" that number of witnesses per published court policy memorandum as to listing all prospective possible witnesses. We shall obviously not call that many witnesses. We listed exhibits per court policy memorandum. It is submitted this matter should be transferred to Department One for transfer to a trial department. . . . [For consolidation with West District Action] . . .

Chester Leo Smith has verified these responses.

DATED: March 6, 1994

SMITH & SMITH

By: /s/ Chester Leo Smith
CHESTER LEO SMITH
Attorneys in Pro Per

IN PROPRIA PERSONA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

| | |
|---|---|
| In The Matter of the Estate of HARRIET PEARL SHAPIRO, aka SUSAN CABOT ROMAN, DECEDENT. | CASE NO. P 712 879<br>OBJECTIONS TO FORM AND CONTENT OF PROPOSED FINDINGS AND PROPOSED ORDER<br>DATE OF HEARING: 5/2/94<br>TIME: 11:00 AM AND 1:30 PM<br>DEPT. 11<br>(Filed May 19, 1994) |

* * *

(10) The proposed findings and proposed order are deficient in form and substance in that they propose to declare an entire attorney agreement automatically void because an attorney does not tell a prospective client charged with first degree murder (who called the attorney as a long time family acquaintance who knew he suffered a potentially mortal disease), to review the matter with another attorney before any action was taken. This is a violation of the due process rights and equal protection rights of both counsel and accused client under Article XIV of the Constitution of the United States.

The attorney has a due process right to be protected in his authority to represent and act where the State Bar

requires a written agreement at the commencement of the attorney-client relationship.

The client has a due process right to obtain immediate action by an attorney for medical and defense reasons where he may lose his life without medical attention directed to a sophisticated disease and lose critical evidence if instant protective action is not taken.

The client can always under the laws of this State (which regulate procedures for legal action by attorneys for fees) have a court review the reasonable [sic] of the agreement and the circumstances of signing and the reasonableness of the charges and services.

The agreement itself complied on its face with statutory requirements by stating in capitals at the beginning:

"You have a right to negotiate with an attorney as to the amount of any fee or a percentage of any contingency fee before you sign this agreement. You also understand the total charges for legal services cannot be estimated and that the charges will very substantially exceed the sum of five thousand dollars."

To hold such an agreement automatically void is to place form over substance and violates Article XIV of the Constitution of the United States.

* * *

Wherefore, the Smiths pray their objections be sustained, and any additions as proposed be found as proper.

Dated: May 18, 1994

/s/ Chester Leo Smith
CHESTER LEO SMITH

BERT Z. TIGERMAN, State Bar No. 27867
VICKI L. CRESAP, State Bar No. 144377
TURNER GERSTENFELD WILK TIGERMAN & YOUNG
8383 Wilshire Boulevard
Suite 510
Beverly Hills, California 90211-2498
(213) 653-3900

Attorneys for Heir, TIMOTHY ROMAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

| | |
|---|---|
| In the Matter of the Estate of<br><br>HARRIET PEARL SHAPIRO, aka SUSAN CABOT ROMAN,<br><br>Deceased. | **Case No. P 712879**<br><br>~~[Proposed]~~ /s/ AHG ORDER GRANTING SUMMARY ADJUDICATION ESTABLISHING THAT THE CLAIM OF SMITH AND SMITH AGAINST THE ESTATE IS INVALID AND VOID AND THAT THE ESTATE THEREFORE HAS NO DUTY WITH RESPECT TO SAID CLAIM<br>[C.C.P. 437c]<br><br>DATE: May 2, 1994<br>TIME: 11:00 a.m.<br>DEPT.: 11<br><br>(Filed Aug. 16, 1994) |

The motion of Timothy Roman for summary adjudication of issues came on regularly for hearing before this Court on May 2, 1994 in Department 11, the Honorable

Arnold H. Gold, Judge, presiding. Bert Z. Tigerman and Vicki L. Cresap appeared as attorneys for Timothy Roman ("Roman") and Chester Leo Smith ("Smith") appeared in propria persona and on behalf of responding parties Smith and Smith (the "Smiths") and Ann Lonergan Smith.

After full consideration of all evidence set forth in the papers submitted, the inferences reasonably deducible therefrom, except that to which objection was sustained, and after having heard and considered oral argument in the matter, the Court denies the motion with respect to Issue No. 1 and grants the motion with respect to Issue No. 2 as follows:

1. With respect to Issue No. 1, that the Smiths are not entitled to distribution from the estate of Harriet Pearl Shapiro (the "Estate") because the Agreement for Services (the "Fee Agreement") between Timothy Roman ("Roman") and Smith executed on December 12, 1986, created a mortgage lien in favor of the Smiths with respect to specific real property in the Estate and (1) as mortgagees, the Smiths do not have an interest that entitles them to distribution; and (2) the security interest of the Smiths was cut off by the sale of the real property during the course of probate administration, the Court denies the motion with respect to this issue for the following reasons:

The Court finds that Issue No. 1 is not a proper subject for determination in a Probate Code §11604 proceeding. If, as contended by Roman, Smith and Smith is a mortgagee under the Fee Agreement and mortgage rights are not subject to distribution in probate, then the pending Petition to Inquire into Circumstances Surrounding

and Consideration for Transfers of Interest (Probate Code Section 11604) filed by the Co-Administrators herein (the "Petition"), which, in Paragraphs 3, 4, and 5 asks the Court to determine the validity of the Fee Agreement, is not a proper vehicle for determining the Smiths' rights in that there is no transfer to the Smiths of any interest in the Estate nor any agreement, request or instruction of Roman to transfer any interest. Therefore, the Court should not summarily adjudicate in favor of denying their rights in this particular proceeding.

If Roman's contention is incorrect and the Smiths are not mortgagees, and if, were it not for the Court's findings and orders herein with respect to Issue No. 2, the Smiths otherwise would be entitled to distribution, then Issue No. 1 would not be an appropriate subject for determination under Probate Code §11604 because Roman has not demonstrated [as a matter of law that there was /s/ AHG] any unreasonable compensation for said purported transfer nor that said purported transfer was obtained by duress, fraud or undue influence.

2. With respect to Issue No. 2, the Court finds that there is no triable issue of material fact as to the duty of the Estate with respect to the Smiths' claims as set forth in Paragraphs 3, 4, and 5 of the Petition and that summary adjudication should be granted as to Issue No. 2. The Court determines that the Fee Agreement is void [as are] in violation of public policy because it ~~violates~~ [violated /s/ AHG] former rules [/s/ AHG] 5-101 ~~and 2-107~~ [/s/ AHG] of the Rules of Professional Conduct of the State Bar of California, in effect in 1986 ~~(respectively~~ [/s/ AHG] ("Former Rule 5-101"), [/s/ AHG] ~~and "Former Rule 2-107")~~ [/s/ AHG] for the following reasons:

[/s/ AHG] The Fee Agreement gave the Smiths an adverse financial relationship to Roman in that it created a security interest that allowed the Smiths to summarily collect their fees and, in violation of former Rule 5-101, the Smiths failed to ~~advise Roman~~ [/s/ AHG] ~~to consult with another attorney with respect to the terms of the Fee Agreement and failed to allow Roman time to consult with another attorney with respect to~~ [/s/ AHG give Roman a reasonable opportunity to seek the advice of independent counsel of Roman's choice on] the terms of the Fee Agreement.

* * *

[Deleted Paragraph /s/ AHG]

With respect to Issue No. 2, ~~(a) and (b),~~ [/s/ AHG] the Court finds that, given the nature of the interest created by the Fee Agreement, there is no triable issue of material fact as to the applicability of Former Rule 5-101.

Undisputed Fact No. 10 states that "[t]he Fee Agreement provides that Roman assign to the Smiths a lien on certain real property in the Estate as security for fees." In their response, the Smiths object to this Undisputed Fact. Without determining the propriety of the objection, it appears to the Court that, in their response, the Smiths do not dispute the fact, but merely refer the Court to the Fee Agreement itself, which was offered by Roman as Exhibit "E" to the Declaration of Bert Z. Tigerman in Support of the Motion for Summary Adjudication.

Undisputed Fact No. 39 states that "[o]n September 18, 1990, the Smiths filed herein their Notice of Assignment by Timothy Roman (to Chester Leo Smith and Ann

L. Smith) of Lien Interest in Real Property Inherited by Mr. Timothy Roman (the "Notice of Assignment")." In their response, the Smiths admit this Undisputed Fact.

The Court finds that Undisputed Facts Nos. 10 and 39 are undisputed and, taken together, those facts establish that, under the Fee Agreement, the Smiths took a present interest in Roman's interest in real property in the Estate as security for their fees. ~~Were it otherwise valid, the assignment to the Smiths would permit direct distribution from the Estate to them of the asset assigned (or the proceeds from the sale thereof)~~ [/s/ AHG]

[Deleted Paragraphs /s/ AHG]

The Court finds as a matter of law, that ~~given the nature of the security interest itself, and the conflict inherent therein,~~ [/s/ AHG] the Smiths were required to comply with the requirements of Former Rule 5-101 in obtaining Roman's consent to the Fee Agreement.

The Court finds that Undisputed Facts Nos. 21, 22, and 23 are undisputed and, when taken together demonstrate that there is no triable issue of material fact as to the Smiths' failure to comply with the provisions of Former Rule 5-101.

Specifically, Undisputed Fact No. 21 states that "[p]rior to Roman signing the Fee Agreement, Smith did not advise him to consult with another attorney." The Smiths' response admits that fact. Additional statements offered by the Smiths in response to Undisputed Fact No. 21 do not constitute contrary evidence and do not undermine the undisputed nature of Undisputed Fact No. 21.

Undisputed Fact No. 22 states that "[p]rior to Roman signing the Fee Agreement, Smith did not allow him time to consult with another attorney." The Smiths' response admits that fact. The response states "I did not then allow any time for him to consult with another attorney."

Undisputed Fact No. 23 states that "[a]t the time the Fee Agreement was signed, Smith did not advise Roman of any conflict of interest arising out of the provisions of the Fee Agreement." The Smiths' response admits that fact. The response states "[i]t is true I did not discuss with him any conflict of interest. Time was critical." With respect to the Los Angeles Times article quoted by the Smiths in their response to Undisputed Fact No. 23, without determining the question of its authentication, the Court finds that portion of the response irrelevant as to the question of whether Undisputed Fact No. 23 is undisputed.

With respect to citations to the Declaration of Chester Leo Smith contained in responses to Undisputed Facts Nos. 11, 21, 22, and 23, those citations fail to direct the Court to any page or line number. The Court did not, and is not required to, search through the declaration in an effort to determine whether any evidence contained therein is relevant to the Undisputed Facts.

The Smiths' reliance on the alleged exigencies of the situation is unfounded. It appears to the Court that there was time for the Smiths to have complied with the Rules of Professional Conduct in obtaining Roman's consent to the Fee Agreement.

Even were that not the case, the Court finds that the Rules of Professional Conduct in issue here were established by the State Bar as a matter of public policy. Thus, even were circumstances exigent, public policy interests still would be controlling. The Court therefore finds, as a matter of law, that, as a result of the Smiths' violations of the Rules of Professional Conduct, the Fee Agreement is void as against public policy.

[Deleted Paragraphs /s/ AHG]

IT IS THEREFORE ORDERED that the motion for summary adjudication is GRANTED as to Issue No. 2 and denied as to Issue No. 1 and that any final order with respect to the Petition shall, in addition to any other matters determined at the hearing of the Petition, include the following order: ~~with respect to Paragraph Nos. 3, 4, and 5.~~ [/s/ AHG]

The Agreement for Services between Timothy Roman and Chester Smith executed on December 12, 1986 (the "Fee Agreement") is void as [/s/ AHG] in violation of public policy in that it ~~violates~~ violated [/s/ AHG] former rules [/s/ AHG] 5-101 ~~and 2-107~~ [/s/ AHG] of the Rules of Professional Conduct of the State Bar of California, in effect in 1986. ~~because~~ [/s/ AHG]

[Deleted Paragraphs /s/ AHG]

DATED: ~~May~~ [/s/ AHG] August 15, 1994

/s/ ARNOLD H. GOLD
ARNOLD H. GOLD, Judge

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

| | |
|---|---|
| In Re the Estate of: HARRIET PEARL SHAPIRO AKA SUSAN CABOT ROMAN, Decedent. | CASE NO. P 712879<br><br>OBJECTIONS [FILED SEPT. 6, 1994] OF CHESTER LEO SMITH AND ANN LONERGAN SMITH TO FORM AND CONTENT OF PROPOSED ORDER SETTLING PETITION TO INQUIRE INTO CIRCUMSTANCES SURROUNDING AND CONSIDERATION FOR TRANSFERS OF INTEREST (PROBATE CODE #11604)<br><br>DATE: August 2, 1994<br>DEPT: 11<br>TIME: 11:00 a.m. |

[Petitioners aver that these "Objections . . . " incorporated the same objections as the objections to the order granting summary adjudication filed 8/16/94.]

ANTHONY A. SPAULDING (30288)
Attorney at Law
12301 Wilshire Blvd. #303
Los Angeles, CA 90025
(310) 826-8880

Attorney for MATTHEW F. SPAULDING, Co-Administrator

BROWN, ALTSHULER AND SPIRO
9301 Wilshire Blvd. #504
Beverly Hills, CA 90210-5412
(310) 275-4475

Attorneys for LEO ALTSHULER, Co-Administrator

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

| | |
|---|---|
| Estate of<br><br>HARRIET PEARL SHAPIRO aka SUSAN CABOT ROMAN<br><br>Decedent | Case No. P 712 879<br>ORDER SETTLING PETITION TO INQUIRE INTO CIRCUMSTANCES SURROUNDING AND CONSIDERATION FOR TRANSFERS OF INTEREST (PROBATE CODE § 11604)<br><br>Date: August 2, 1994<br>Time: 9:15 AM<br>PLACE:Dept 11<br><br>(Filed Nov. 28, 1994) |

MATTHEW F. SPAULDING and LEO ALTSHULER, Co-Administrators of the Estate of HARRIET PEARL SHAPIRO, deceased having filed their Petition to Inquire

into Circumstances Surrounding and Consideration for Transfers of Interest (Probate Code § 11604), said petition and the response of SMITH and SMITH having come on regularly for hearing on August 2, 1994 at 9:15 a.m. in Department 11, ARNOLD GOLD, Judge Presiding and LEO ALTSHULER, CHESTER SMITH and BERT TIGERMAN appearing for the interested parties, the court finds:

Due notice of the Petition has been regularly given for the period and in the manner prescribed by law. The order granting Summary Adjudication was signed by the Court on August 15, 1994.

IT IS ORDERED AND ADJUDGED THAT:

(1) The Agreement for Services between TIMOTHY SCOTT ROMAN and SMITH and SMITH dated December 12, 1986 is void as in violation of public policy in that it violated former rule 5-101 of the Rules of Professional Conduct of the State Bar of California, in effect in 1986, and by virtue thereof the Notice of Assignment by TIMOTHY SCOTT ROMAN of Lien Interest and in real property inherited by TIMOTHY SCOTT ROMAN filed by Smith and Smith on September 18, 1990 is of no force or effect and is invalid.

(2) The instrument entitled Trust Declaration of TIMOTHY SCOTT ROMAN dated April 5, 1989 purportedly transferring fifty percent (50%) of TIMOTHY SCOTT ROMAN's interest in the within estate to Mitsui Manufacturers Bank as Trustee, aka The Hussein Trust, is of no force or effect and no distribution is to be made to said Trust.

(3) The instrument entitled Irrevocable Assignment of Interest in Estate dated October 29, 1990 signed by TIMOTHY SCOTT ROMAN effectively transfers his interest in the within estate to Trust Services of America, Inc. as Trustee of the TIMOTHY SCOTT ROMAN IRREVOCABLE TRUST dated October 29, 1990 and is a valid transfer, and the April 5, 1989 instrument is no impediment to such transfer.

Dated: November 23,
[/s/ AHG] 1994

/s/ Arnold H. Gold
ARNOLD GOLD,
Judge Presiding

IN RE THE ESTATE OF: HARRIETT SHAPIRO.

REPORTER'S TRANSCRIPT

MONDAY, MAY 2, 1994

[p. 7] THE COURT: . . .

The Court declines to receive the proffered documents in evidence except to the extent [p. 8] that they are already before the court in connection with the summary judgment proceeding.

I am on another tack, Mr. Smith. I am on the tack of not whether you performed the services or not, and not how valuable your services were, but I am on the tack of Rule 5-101, former Rule 5-101, now in Rule 3-300 of the California Rules of Professional Conduct. * * *

DATED THIS 13TH DAY OF MAY, 1994.

/s/ Janis Fonseca, CSR #5141
JANIS FONSECA, OFFICIAL REPORTER

CHESTER LEO SMITH, ESQ. (STATE BAR NO. 22102)
ANN L. SMITH, ESQ. (STATE BAR NO. 94331)
SMITH & SMITH
5670 Wilshire Boulevard
Suite 1610
Los Angeles, CA 90036
(213) 938-9170

Attorneys in Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

| | | |
|---|---|---|
| In re the Estate of: | ) | CASE NO. P 712879 |
| HARRIET PEARL SHAPIRO aka SUSAN CABOT ROMAN, | ) | **REQUEST FOR JUDICIAL NOTICE** |
| Decedent. | ) | DATE: March 21, 1994 |
| | ) | TIME: 11:00 a.m. |
| | ) | DEPT: 11 |

(Filed Mar. 7, 1994)

The Appellants . . . request the Court (under Evidence Code Section 450 to 459) take Judicial Notice of the following legal proceedings . . .

1. *IN THE MATTER OF THE ESTATE OF HARRIET PEARL SHAPIRO* (Central) P712879, Los Angeles Superior Court, . . . Copy attached of Objections of Smith & Smith (To Petition)/Request for Transfer to West District as filed in P712879.

2. Superior Court . . . Criminal Court Proceeding No. A 815402, . . . *THE PEOPLE OF THE STATE OF CALIFORNIA V. TIMOTHY SCOTT ROMAN*, inclusive of

the Declaration duly filed of Arthur Kowell, M.D. (copy attached) and the minute orders . . .

3. Proceedings in the State of Maryland . . . by order of Suerior [sic] Court, . . . in Case A815402 . . . re NIH depositions, inclusive of Objections of Department of Justice. Depositions . . . Dr. Paul Brown and Dr. Joseph Gibbs of the NIH Central Nervous Systems Study Unit. . . .

4. Superior Court (West District) Civil Court Proceeding No. SC NO. 005430 . . . *ANN LONERGAN SMITH AND CHESTER LEO SMITH VS. ANTHONY SPAULDING AND MATTHEW SPAULDING AND LEO ALTSHULER AS CO-ADMINISTRATORS OF THE ESTATE OF HARRIET PEARL SHAPIRO; THE ESTATE OF HARRIET PEARL SHAPIRO; TIMOTHY S. ROMAN, ET AL.*, inclusive of Answer to a Cross-Complaint.

5. Conservatorship Proceedings as to Timothy Scott Roman initiated by Mildred Kahan, an Aunt, Probate Case No. P739726. (Shows Court rejected Request for Conservator.)

* * *

DATED: March 6, 1994

By: /s/ Chester Leo Smith
CHESTER LEO SMITH
in Pro Per

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

| | |
|---|---|
| Estate of HARRIET PEARL SHAPIRO, Deceased. | B086064 |
| | (Super. Ct. No. P712879) |
| CHESTER LEO SMITH et al., Petitioners and Appellants, v. TIMOTHY SCOTT ROMAN, Respondent and Appellant. | ORDERS: DENYING DISMISSAL MOTION IN PART; CONSOLIDATING APPEALS; GRANTING DISMISSAL OF APPEAL FROM FAMILY ALLOWANCE ORDER; AND PERMITTING THE PARTIES TO PROCEED PURSUANT TO RULE 5.1 |
| | (Filed Dec. 20, 1994) |

The court has reviewed the superior court file as well as the dismissal and consolidation motion and the response filed by appellants. The dismissal motion, except as to the family allowance order, is denied. As the court can best understand it, appellants, by reason of the orders of the probate court, no longer have any standing to proceed further in connection with the estate litigation. Therefore, the orders to date constitute a final judgment within the meaning of Code of Civil Procedure section 904.1. (*Justus v. Atchison* (1977) 19 Cal.3d 564, 568; *Dominquez v. City of Alhambra* (1981) 118 Cal.App.3d 237, 241.) Also, the refusal to direct the payment of a "debt, claim,

devise, or attorney's fee" is appealable pursuant to Probate Code[1] section 7240, subdivision (1). Finally, section 7240, subdivision (m) permits appeal from orders made pursuant to section 11604. Accordingly, these matters which are the subject of the notices of appeal are appealable. As a result, the dismissal motion is denied as to the orders pursuant to section 11604 and prior rulings pertinent to that issue. (Code Civ. Proc., § 906.) the interests of justice warrant consolidation of all of these appeals.

As to the family allowance issue, orders in connection with such a question are appealable. (§ 7240, subd. (e).) However, appellants interposed no objection to the family allowance order. They filed no papers in opposition to the family allowance application. Appellants did not appear at the family allowance hearing to oppose the application for such relief. Therefore, any argument posited by appellants concerning the family allowance order they did not contest would be frivolous. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1138; *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1065-1066; *Estate of Leslie* (1984) 37 Cal.3d 186, 202.) Hence, because any contentions would be frivolous, the appeal from the family allowance order is dismissed. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 706; *Ferguson v. Keays* (1971) 4 Cal.3d 649, 658.)

The parties have requested permission to proceed pursuant to rule 5.1 of the California Rules of Court.[2] The request is granted. The rule 5.1 designation is deemed

---

[1] All future statutory references are to the Probate unless otherwise indicated.

[2] All future references to a rule are to the California Rules of Court.

filed effective this date. There having been no request for a reporter's transcript filed to date, the appellants' opening brief is due 70 days from the date of this order. (Rule 16(a).)

Finally, the dismissal motion makes reference to certain files which are unrelated to the present case. The court does note that the clerk's transcript request attached to the notice of appeal filed September 26, 1994, by appellants does refer to certain files. This court may only rely normally on the documents reviewed by the trial court in ruling on the orders which are the subject of the present appeal. (*People v. Hardy* (1992) 2 Cal.4th 86, 134; *People v. Preslie* (1977) 70 Cal.App.3d 486, 493.) If there was a request before the trial judge to judicially notice certain files, then it would be appropriate, more expeditious, and less expensive, to simply make the same request to this court rather than have a lengthy and expensive appendix prepared.

/s/ Paul Turner
PAUL TURNER,
PRESIDING JUSTICE

/s/ Orville A. Armstrong
ORVILLE A. ARMSTRONG,
ASSOCIATE JUSTICE

INTERROGATION
OF
TIMOTHY ROMAN

Det. 1 O.K. Tim. We're trying to be in touch with the people out there at the house so we have an idea or a feel for what is going on. We haven't been out there yet, so it's a little tough you know to try and do what we're doing. You've told us now essentially what you said happened out there. Alright, We're going to want to ask some more detailed questions at this point.

T.R. O.K.

Det. 1 O.K., and

T.R. I'll do the best I can.

Det. 1 That's all I want you to do, the best you can.

T.R. O.K.

Det. 1 As I'm sure your aware when the police aware when the police start getting into some real detailed questions, before they do that they advise people of their rights. O.K.? And that's what we want to do with you now. I want you to listen to me, understand what I'm saying, if you don't understand ask me a question, and we'll get it cleared up for you.

T.R. I do have an attorney.

Det. 1 O.K., well let me run through the rights,

T.R. O.K.

Det. 1 and we'll see what you want to do

T.R. alright

Det. 1 O.K.? You have the right to remain silent if you give up the right to remain silent anything you say can and will be used against you in court, you have the right to speak with an attorney and have an attorney present during questioning. If you want an attorney and cannot afford one one will be appointed for you without charge before questioning. Do you understand all of your rights?

T.R. Yes.

Det. 1 O.K. Do you want to give up the right to remain silent, talk to me now about what happened tonight.

T.R. O.K. I give up.

Det. 1 O.K. And do you want to do – obviously neither one of us are attorneys, so you want to talk to us now without an attorney here?

T.R. I can't get in contact with him until tomorrow, he's in Beverly Hills.

Det. 1 Well, whatever you want to do. You have the option at this point. We want to ask you questions about what happened.

T.R. What happens if I – I'm just afraid. I just want my attorney here.

Det. 1 Well, that's your option, you can do what you want. We just want to try to find out what happened.

T.R. I know, I know, I was told to try and protect myself. Alright I'll give up my right.

Det. 1 O.K., you want to talk to us now then?

T.R. Yes. . . .

Det. 2 Yeah, so convenient huh?

T.R. It's not convenient!

Det. 2 Do you know how cold it is out there tonight?

T.R. Yes, but you don't understand

Det. 2 It's freezing out there.

T.R. She had a fever.

Det. 2 Well, you don't leave a door open when somebody has a fever.

T.R. She wanted the door open, O.K.?

Det. 2 Convenient, wasn't it, so this burglar could come in there, you take the dog out, so the dog doesn't attack him.

T.R. I put the dog out there

Det. 2 You know if a burglar came in here and a dog was there that burglar would have been torn up huh?

T.R. Don't you think I've thought of that?

Det. 2 Well, you did think of that you took him out.

T.R. I took him out because he was aggravating my mother. I put him there because she didn't

Det. 2 This dog sleeps with your mother all the time, doesn't he?

T.R. Yes, but not lately, cause she's had the flu, and she has asthma and he stirs up a lot of stuff some time.

You can check in the records. You can check. You can check, I swear to God, you can check. Yes, yes, I don't care what you say, yes.

Det. 1 Understand what is gonna happen tonight, O.K.? I don't think you really believe it. You are going to be booked for murder.

T.R. I want to speak to an attorney.

Det. 1 You can call an attorney when your [sic] booked. . . .

**IRWIN MITCHELL**

**SOLICITORS**

ST. PETER'S HOUSE, HARTSHEAD, SHEFFIELD S1 2EL
Tel: 0114 276 7777 - DX:10513 - Fax:0114 275 3306

Mr. Chester Leo Smith
Attorney At Law
636 East Walnut Street
Suite 112
Pasadena
CALIFORNIA 91101
**UNITED STATES OF AMERICA**

YOUR REF:
OUR REF: PS/DB/DAJ/SEW
DATE: 10 October 1996

Dear Mr. Smith

**Re: Human Growth Hormone/Creutzfeldt Jakob Disease Litigation**

Many thinks for your letter of 2 October 1996 and Travellers Cheque for $100.00.

Please find enclosed a copy of the Judge's Summary as handed down on 19 August 1996, together with a copy of the un-revised Judgment.

I have an American colleague who uses Federal Express to mail documents to the States and accordingly I am despatching [sic] these to you under the same cover. I will let you know if either we owe you any change, or if there is any outstanding amount to be paid!

I can confirm that Irwin Mitchell and Smith Llewelyn represented the Legal Aid Steering Committee on behalf of the Plaintiff's in this action, and that this is a copy of the un-revised Judgment which the parties received. I hope that is enough verification, but if you do require anything more formal please let me know.

Thank you also for the other enclosed documents which are of interest. I expect you are aware that Dr Paul Brown appeared as a Defence witness in our case.

The current situation here is that his Honour Mr Justice Morland considered the generic questions through the vehicle of what we termed the "Group A" cases, being those who had contracted CJD, or their families. Following on from those generic findings, we are now in the midst of trying to see what will happen with both the Group A cases where treatment was started before July 1977, but continued after it, and also our "Group B" cases, the walking worried.

Many questions still have to be answered and we appear to have a further fight on our hands. It may be that we have other documents which might be of interest to you, but perhaps this is something we can discuss further. One difficulty we have here is the documents are not necessarily in the public domain following disclosure in a court case, and I am aware that our laws of disclosure are not as wide as those in America.

If, however, there is anything else you feel we might be able to help with, please do give either me or David Body a call.

With many thanks for your kind wishes.

Yours sincerely

/s/ Delyth A. Jones
**Delyth A. Jones**
**for IRWIN MITCHELL**

---

**IRWIN MITCHELL**

**SOLICITORS**

ST. PETER'S HOUSE, HARTSHEAD, SHEFFIELD S1 2EL
Tel: 0114 276 7777 - DX:10513 - Fax:0114 275 3306

Mrs Burgess-Anditon
2935 Augusta 7
San Luis Obispo
CALIFORNIA
USA 93401

YOUR REF:
OUR REF: PS/DB/DAJ/CLW/75/94/Burgess-Anditon
DATE: 19 July 1996

Dear Mrs Burgess-Anditon

**Re: Kevin Patrick Burgess-Anditon**

Please find enclosed a copy of our Press Release following judgment, to keep you up to date.

As you are aware, the Judgment is substantial and we will now be considering it in detail and preparing a bulletin as soon as we can for dispatch early next week.

Copies of this press release are also being sent to any MPs with whom people have been in contract and it may well be that questions are raised in the House of Commons early next week too.

We hope to be back in touch as soon as we can with more details.

Kind regards.

Your sincerely

/s/ Mary Howell
Delyth A Jones
for IRWIN MITCHELL

---

EARLY DAY MOTION

That this House welcomes the decision of Mr Justice Morland in the Creutzfeldt-Jakob Disease Litigation but nevertheless notes with concern:

a. That it was necessary for this forensic judicial enquiry to take place because of the failure of the Secretary of State for Health to order a Public Enquiry akin to that undertaken by the Allars Inquiry between May 1993 and June 1994 in Australia; and

b. That such rigorous judicial enquiry has left some of the Plaintiffs without compensation for loss of loved ones at a time when HM Government has promised ex gratia payments of 2.5 billion pounds to dairy farmers for the loss of their cattle from the equivalent bovine disease, BSE; and

c. That HM Government should make payment of an appropriate sum of compensation to all of those who have lost loved ones to CJD following Growth Hormone treatment before 1985

d. That such judicial enquiry into the short comings of the working of a branch of the scientific civil service was necessitated by the absence of any independent scrutiny by any Government or other watchdog of safety standards and risk management in that service; and

e. Deplores the fact that such scrutiny by litigation will become rare, if not impossible in future because of changes to Legal Aid eligibility and cost rules set out by the Lord Chancellor's Department in the White Paper: "Striking the Balance: The Future of Legal Aid in England and Wales" published on 2 July 1996.

[SEAL] THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

1149 SOUTH HILL STREET,
LOS ANGELES, CALIFORNIA 90015-2299
TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX:(213) 765-1383

November 4, 1996

*PERSONAL AND CONFIDENTIAL*

Chester Leo Smith, Jr.
Smith & Smith
636 E. Walnut St. #112
Pasadena, Ca. 91101

RE: Case No.: 96-0-05439
Complainant: State Bar

Dear Mr. Smith:

We are directing this communication to you based upon our information that you are not currently represented by counsel in this matter. If we are incorrect, please promptly advise the undersigned in writing so that we may direct future communications to your counsel.

On August 26, 1996, the State Bar initiated this complaint. The allegations are as follows:

1. Regarding your December 12, 1986 retainer agreement with Timothy Scott Roman, you obtained a

security interest in Roman's inheritance without giving him the opportunity to seek independent counsel. In addition, you failed to advise Roman of any conflicts of interest.

2. The $230,000.00 you charged Roman for legal services, is an illegal and/or unconscionable fee.

In order to complete this investigation, we request your written response to these allegations along with any relevant documentation available. Please reply by November 14, 1996.

Your cooperation is anticipated and appreciated. California attorneys are required to cooperate and participate in the disciplinary investigation and proceeding pursuant to Business and Professions code section 6068(i). In the event this matter results in public discipline, such attorneys may be subject to a cost assessment pursuant to Business and Professions Code section 6086.10.

Please contact me at (213) 765-1096 if you have any questions.

Sincerely,

/s/ Sheryl Smith
Sheryl Smith
Investigator

*Rutter Group: California Practice Guide.* **Vol. 1.Family Law (1994)**

"1. General Considerations

"a.[1:201]. . . . the general presumption of invalidity of transactions between "trustee" and "beneficiary" . . . does not apply to . . . fee agreements [see Prob.C. §16004 (c); *Walton v. Broglio* (1975) 52 CA3d 400

"2. [1:205] . . . All attorney fee agreements (except contingency fee agreements to the extent separately governed by Bus. & Prof.C. §6147 . . . MUST COMPLY WITH STATUTORY requirements [#6148]

"a. [1:206] **In writing:** The "Contract for services" . . . must be reduced to writing in any case wherein it is "reasonably foreseeable" . . . total expense. . . . will exceed $1,000. . . .

"d. [1:222] **Exceptions:** Adherence to the §6148 requirements (above) is excused in the following limited circumstances (Bus & Prof. C. §6148(d)):

"(1) [1:223] **"Emergency" services:** When legal services are rendered in an "emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is impractical." [Bus & Prof. C. §6148(d)(1)]

"e. [1:228] Absent an . . . exception above, counsel's failure to comply with §6148 renders the agreement voidable at the client's option . . . in which case, the attorney will be limited to "reasonable fees" for services rendered [Bus. & Prof.C. §6148(c)].

"5. **Attorney Fee Security Agreements**

"a. [1:279] **Contractual 'charging liens'.** Agreements giving . . . a lien to satisfy . . . fees out of the funds or property awarded to the client ("charging liens") are commonplace. In contrast to invalid "retaining liens" . . . enforceable in California and an effective form of security device. [*Cetenko v. United California Bank* (1982) 30 C3d 528, 531-532, 179 CR 902, 904-905;

"(b) [1:283] **Independent lien agreement:** An attorney's lien may also be created on the proceeds of another judgment not connected with the case in which the attorney is employed. This procedure makes use of an independent lien agreement . . . "

"b. [1:287] . . . Counsel may ethically accept the client's unsecured promissory note in payment of fees; this arrangement violates no public policy because, if a fee dispute arises, the attorney may enforce the note against . . . client's assets only through a judicial proceeding where the court will scrutinize . . . fairness . . . [*Hawk v. State Bar* (1988) 45 C3d 589, 600-601.

[FROM EXHIBIT BOX "2" OFFERED INTO EVIDENCE MAY 2, 1994, INCLUSIVE OF EXHIBITS IN CRIMINAL PROCEEDINGS PEOPLE V. ROMAN NO. A 815402. INDEX TO EXHIBIT BOX 1 AND 2 IS EXHIBIT RR TO MR. ROMAN'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES, THUS ALL OF SAID EXHIBITS IN SAID BOXES WERE BEFORE THE COURT]

* * *

---

[REISS-DAVIS CHILD STUDY CLINIC
FEBRUARY 9, 1976.
9760 WEST PICO BLVD.
LOS ANGELES, CALIFORNIA 90035.]

DEAR DOCTOR SHAPIRO:

WOULD YOU KINDLY ADVISE WHETHER OR NOT TIMOTHY SHOULD CONTINUE WATCHING THE MONSTER MOVIES AT THIS TIME. IF SO, HOW OFTEN AND IF ANY, UNDER WHAT TERMS I.E. EARNING IT FOR EXTRA HOMEWORK OR? . . . ALSO HAVE YOU ANY DEFINITIVE CONCLUSION AS TO WHAT THE 'MONSTER' EMPHASIS MEANS. IS IT GENERAL ANXIETY OR PARENTAL. WOULD APPRECIATE A REPLY, IF AT ALL POSSIBLE, A WRITTEN NOTE FROM YOU, IN THESE SPECIFIC AREAS. //THANK YOU/MRS. ROMAN.

* * *

---

PSYCHOLOGICAL EVALUATION REISS-DAVIS 7/1/75. REFERRED FOR TESTING BY BARBARA CARR'S TEAM. REASONS REFERRED TO CLINIC:

MOTHER CONCERNED ABOUT TIM'S APPARENT PREOCCUPATION WITH MONSTERS, REPORTING THAT HE SPENDS MUCH OF HIS TIME DRAWING PICTURES OF **AGGRESSIVE**-APPEARING MONSTERS. . . . TIM'S PRINCIPLE MEANS OF DEALING WITH HIS AGGRESSIVE IMPULSES IS TO PROJECT THEM ONTO HIS FANTASIED MONSTERS. . . . TIM TURNS HIS ATTENTION TOWARDS THE MONSTERS USING INTELLECTUALIZATION IN AN ATTEMPT TO CONTROL THEM . . .

* * *

---

PARENT COUNCIL FOR GROWTH NORMALCY 5.23.88
CAMELLIA LANE,
OPELOUSAS LOUISIANA 70570.

CHESTER: ENCLOSED COPY OF CURRENT QUARTERLY REPORT . . . ALSO ENCLOSED COPY OF PED. ENDO NURSING SOCIETY NEWSLETTER, NOTE REFERENCES, AND COPY OF REPORT. . . . CARL

* * *

---

SUPERIOR COURT OF THE STATE OF CALIFORNIA. REPORTER GARY GORKOS. PEOPLE OF THE STATE OF CALIFORNIA V TIMOTHY SCOTT ROMAN A 815402. REPORTER'S PARTIAL TRANSCRIPT PROCEEDINGS FRIDAY, APRIL 14, 1989. THE COURT: "REGARDING THE MEDICAL TESTIMONY, 25 A AND 28 A OF THE PENAL CODE ARE THE CONTROLLING CODE SECTIONS . . . CERTAINLY I DON'T INTEND TO RULE AS TO WHAT SHOULD BE ADMISSIBLE IN THE EVENT THE DEFENDANT IS FOUND GUILTY AND WE GO

INTO THE SECOND PHASE OF NOT GUILTY BY REASON OF INSANITY . . . BUT AT THIS POINT THERE IS NOTHING THAT I CAN SEE THAT WOULD BE RELEVANT ON ANY ISSUE AS TO THE DEFENDANT'S MENTAL STATE ON THE DATE THAT THE CRIME WAS COMMITTED, ABSENT ANY SHOWING THAT THERE'S MEDICAL TESTIMONY THAT WOULD BEAR ON HIS SPECIFIC MENTAL STATE ON THAT PARTICULAR DATE IN QUESTION. I WOULD DENY ANY OFFER OF MEDICAL TESTIMONY DURING THE GUILT PHASE OF THE TRIAL. CERTAINLY WHAT I HEARD TO DAY WOULD BE ASKING THE JURY TO SPECULATE ON SOMETHING THAT EVEN THE NATIONAL INSTITUTE IN WASHINGTON DOESN'T HAVE AN ANSWER TO. AND IT WOULD HAVE NO PROBATIVE VALUE WHATSOEVER FOR THE TRIER OF FACT . . . RULING.

* * *

2.19.85 SOLICITATION OFFER AND AWARD CONTRACT PROPOSAL FROM CENTERS FOR DISEASE CONTROL PROCUREMENT. .17 1349 1

"Collect a 10 milliliter blood specimen from any hgh recipient who developed signs or symptoms within the preceding two years **compatible with CJD or AIDS**, and send equal volume aliquots to the Laboratory of Central Nervous System Diseases, NINCDS, and to the AIDS laboratory, CDC, to check for antibody to 27kDs marker protein associated with CJD and antibody to human T-lymphotropic virus type III (HTLV-III) respectively . . . "Whenever HGH recipients are found to have developed **a new neurological condition** or to have expired . . . where possible blood specimens and/or autopsy speciments of the brain shall be obtained

. . . blood specimens shall be handled as in 7d of Phase 3 above and specimens sent to the Laboratory of Central Nervous Systems Diseases . . . " APP Vol. 17. 13499 etc.

> The CDC researchers are setting a probe into the unknown universe of the brains of Dr. Li's children. But they have to await death and dissection. At APP 885 etc. the mother writes in 1976 to Reiss-Davis Child Clinic re: " . . . what the monsters emphasis means."
>
> The Doctors proceed to assume Id/Ego/Superego. Re the constant . . . "He also denied that he ever had any nightmares about monsters because his monsters were pretty friendly." It entered the mind of no one that the contaminated growth hormone had injected contaminated viruses into the brains of the children "piggy-backing" through their brains . . . For monsters drawings of Mr. Roman: Box Pges 3163 to 3181. 3203 to 3234. 5458 to 5468. For his other obsession – Assault guns. Drawings at 3228/3131/3232/3241/3161/3196/3224/3225. The researchers do not have to wait to autopsy Mr. Roman's brain.

* * *

[Obituary of Dr. Choh Hao Li. Angeles Times 12/2/87 [APP 4862]]

**CHOH HAO LI, 74; ENDOCRINOLOGIST AT UC**

Choh Hao Li, the endrocrinologist who discovered the human growth hormone and gave thousands of abnormally short children the chance for a more normal life, died Saturday in Berkeley, officials at UC San Francisco announced Tuesday. He was 74.

But the achievement for which Li is most likely to be remembered **was the discovery in 1955 of the human growth hormone** – which, as the name implies, stimulates the growth of children and adolescents. He then developed a method of isolating the hormone from human cadavers and purifying it so that it could be administer to children suffering from a form of dwarfism caused by a grown hormone deficiency.

*At the program's peak in 1973, 82,500 pituitary glands were collected for treatment of about 3,000 children.*

* * *

EXCERPTS FROM PRIOR PETITION FOR CERTIORARI. FILED 9/17/88. NO. 86-611. TITLE: TIMOTHY SCOTT ROMAN PETITIONER V. SUPERIOR COURT STATE OF CALIFORNIA. BY CHESTER LEO SMITH, ATTORNEY. DEN. 12/5/88. 109 S.CT. 529, 488 US 981, 102 L.ED.2D561.

* * *

## QUESTIONS PRESENTED

This Petition should be considered now because **Timothy Roman** (as a dwarfed child treated with contaminated growth hormone under an experimental NIH program) precipitates immediate consideration of clear and present dangers confronting **homo sapiens**:

1. **DOES THE** UNITED STATES CONSTITUTION (ART. XIV) PROSCRIBE STATE CRIMINAL – PROSECUTION OF THE SUBJECT OF A DEFECTIVE FEDERAL (NIH) MEDICAL EXPERIMENT FOR AN INTENT CRIME WHERE THE FEDERAL EXPERIMENT WAS DESIGNED TO AFFECT THE FUNCTIONING OF THE BRAIN? . . . **And this raises the issue:**

2. **HOW TO** PROVIDE ADVANCE FEDERAL CONSTITUTIONAL PROTECTION (ART. V) FOR MEDICAL EXPERIMENTEES IN AN ETHICAL MANNER UNDER THE NUREMBERG CODE WHERE NIH SPECIALISTS ARE UNABLE TO CONDUCT ESSENTIAL RESEARCH FOR SPECIES SURVIVAL BECAUSE THEY CANNOT PROVIDE ADVANCED AGREED MEDICAL AND LEGAL PROTECTION **IF THE EXPERIMENT FAILS** . . . FAILURE BEING STATISTICALLY INEVITABLE

GIVEN THE COMPLICATED TERMS OF THE HUMAN EXISTENCE ON THIS PLANET.

## REASONS FOR GRANTING THE WRIT

1. United States v. Stanley shows the Supreme Court considers human medical experimentees a class for which particular (equitable) relief may be appropriate – and suggests the Nuremberg code should be binding not only in this case for this medical experimentee but for other Federal medical experimentees in this class.

2. In the absence of Federal Legislation Legislation, the Federal Courts have a duty to provide appropriate injunctive relief for defendant and members of this class as Federal Medical experimentees.

3. The Nuremberg Code (as to proven Federal human medical experimentees) is binding on the State and Federal Courts of the United States.

## STATEMENT OF THE CASE

Petitioner has been accused by the State of California of the First Degree murder on the evening of 12/10/86, of his mother, Susan Roman. He has been detained . . . since 12/10/86.

. . . At a hearing on 2/5/88 defendant submitted . . . 'Request To Take Judicial Notice/Motion for Continuance/Or Dismiss Under 14th Amendment/ . . . denied by the Judge Presiding, Department H, . . . Case A 814502, Los Angeles Superior Court.

Prohibition was denied 6/2/88 by the Court of Appeal (Second Appellate District, Los Angeles) (App-A-2). Petition for Review was denied July 20, 1988, by the Supreme Court of the State of California.

**Medical History**

Petitioner is a member of the class of 10,000 mostly dwarfed children treated from 1963 to 1985 with National Institutes of Health supplied natural growth hormone obtained from cadavers . . .

Mr. Roman was born in 1964. He was so treated under the NIH program (by thrice weekly injections of nGH) from 1970 to 1985. Mr. Roman then was on this Federal program for 15 of its 22 years, receiving nGH derived from over 400,000 cadavers. In 1985 the program was ordered stopped after several of the 10,000 died of a neurological slow virus disease known as Creutzfeldt-Jakob disease (CJD). CJD is a rare disease **of older age** occurring in adults in their mid-50's at an average rate of one in one million adults. It is also known as "KURU" in New Guinea, where its tribal victims die in a "burst" many years after a feast on the brains of slain enemies.

The NIH had to conclude the laboratory protocols under which the cadaver derived hormone was supposedly 'purified' of mutagens had to have been defective. . . . – and the ultimate fear is a "burst".

The only mutagen so far known to have been transmitted, CJD, is considered one of the group of transmissible degenerative encephalopathies; has never been visualized by electron miscroscopy; is always fatal; there

is no certain test to detect if one is infected; it has a reputed incubation period of 20 to 30 years; it destroys connecting brain tissues (relevant to a defense of grand mal seizures); testing of animals at NIH has produced no results as yet. . . .

This clearly never to be repeated experiment has raised the human CJD transmissible base in the United States ("two-fold to thirty-fold") by adding the 10,000 to a base that in 1980 caused only 142 deaths from CJD.")

Statistically the unknown virus of CJD will now certainly cross AIDS with unknown match-up, but, if a match, viral hell. . . .

To a reasonable certainty the 10,000 are a Federal human medical experiment which has resulted in experimentees with an array of potential diseases of unknown types and diverse effects.

Historically, the legal system has been the insertion point for key random human questions. Compare: **Dreyfus**. . . .

Thus, the words of an original:

> **"No doubt it is possible, as Mr. G. H. Lewes has argued, that at the first commencement of life many different forms were evolved; but if so we may conclude that only a very few have left modified descendants. For, as I have recently remarked in regard to the members of each great kingdom, such as the Vertebrata, Articulata . . . we have distinct evidence in their embryological homologous and rudimentary structure that within each kingdom all the members are descended *from a single progenitor.*"**

The relief prayed for should be granted so that a known human medical experiment is protected, and society can still benefit from the fact petitioner is a member of a class which is a continuing medical experiment, certainly and uniquely unto the issue since **most mutations seem to be recessive and thus tend to be masked for generations.**

Respectfully,

* * *

---